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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 10th December 1954*

**S.R.O. 3662.**—Whereas the election of Kunwar Rananjaya Singh as a member of the Legislative Assembly of the State of Uttar Pradesh from the Amethi (Central) constituency of that Assembly has been called in question by an election petition presented under part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Baijnath Singh, son of Shri Jagat Pal Singh, resident of Village Korari Lachhan Shah, Pargana and Tahsil Amethi, P.O. Shahgarh, District Sultanpur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said election petition, has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

On an appeal filed by Kunwar Rananjaya Singh the Supreme Court has set aside the said Order of the Tribunal *vide* its judgment, dated the 29th September 1954 (Appendix B).

BEFORE THE ELECTION TRIBUNAL AT ALLAHABAD

PRESENT

Sri V. G. Oak, I.C.S.,—*Chairman.*

Sri N. N. Mukerji,—*Member.*

Sri Baburam Avasthi,—*Member.*

ELECTION PETITION No. 252 OF 1952

Sri Baijnath Singh—*Petitioner.*

*Versus*

Kunwar Rananjaya Singh & others—*Respondents.*

JUDGMENT

This is an election petition by Sri Baijnath Singh, resident of village Korari-Lachhan Shah, Pargana and Tahsil Amethi, challenging the election of Kunwar Rananjaya Singh, the successful candidate to the U.P. Legislative Assembly from Amethi (Central) Constituency in district Sultanpur, as a result of the election held on the 31st of January 1952.

Before we enter into the facts of this case it will be convenient to note that, the last date of nomination for this seat from Amethi (Central) was 24th of November 1951; the nomination papers were scrutinized on the 27th of November

1951, the polling took place on the 31st of January 1952 and the result was announced on the 6th of February 1952 after counting. The result was finally published in the U.P. State Gazette on 26th of February 1952. It is further to be noted that as a result of the counting—

1. Mr. Rananjaya Singh (Independent) polled 21,521 votes,
2. Sri Baijnath Singh (Congress) polled 7,832 votes,
3. Sri Harcharan Gupta (Revolutionary Socialist Party) polled 1,115 votes,
4. Sri Ram Naresh Dube (Kishan Mazdoor Praja Party) polled 2,055 votes,
5. Sri Suresh Chandra Misra and Sri Vijay Pal did not contest.

Sri Baijnath Singh, the present petitioner, contests the election of Kunwar Rananjaya Singh, who was declared elected in February, 1952, and who happens to be the son and heir-apparent of Raja Bhagwan Bux Singh, Tallugedar of Amethi, on the grounds that the respondent No. 1 himself, together with his own and his father's servants and other dependents and agents committed various corrupt practices of bribery, exercise of undue influence, publication of false and defamatory statements and concealment of election expenses etc.

In the petition, the petitioner has given in detail all these corrupt practices. He asserts that the respondent No. 1, namely Kunwar Rananjaya Singh offered to secure employments in the Amethi Estate for persons of influence with voters if they would support his candidature and canvass for him. In connection with this allegation the petitioner mentioned the names of Ram Lakhan Singh, who was offered a Zileedarship, and that of Sarjoo Singh who was made a peon.

It is also alleged in the petition that the respondent No. 1 promised financial aid to two local schools, one at Korari Hir-Shah, and the other—a Higher Secondary School—at Bargaon, on condition that the residents of the localities who were interested in these schools should secure votes for him. It is further asserted that the respondent No. 1 entertained leading persons at his Kothi at Ramnagar and at the bungalow of the Manager of his Estate, shortly before the date of election, so that these persons might vote for him, and otherwise help him in his election.

The petitioner strongly accuses Kunwar Rananjaya Singh of offering bribes on the ground that the latter had declared in various election meetings that he would reduce the rents of the tenants if they would support his candidature and vote for him. In this connection it was mentioned that Kunwar Rananjaya Singh not only made this declaration publicly in several villages but also got a pamphlet issued by one Lal Bahadur Singh within a week before the date of polling, to the same effect, and got it widely distributed in the Constituency.

The petitioner also alleged that the respondent No. 1 published false statements in leaflets attacking the personal character and conduct of the petitioner, and thereby prejudiced the voters, so much so, that many of them refrained from voting for the petitioner. In this connection the petitioner has referred to several leaflets (including Ex. 1, issued in the name of Ram Khelawan, the officer-in-charge of the respondent's election office) which were published and distributed at the instance and on behalf of the respondent No. 1 and also to a monthly journal called "The Manaswi", the editor of which was Sri Ram Kishore Shastri, the Private Secretary of the respondent No. 1, and in which articles were published by persons under the influence of the respondent No. 1, challenging the character and conduct of the petitioner.

It is further stated in the petition that the respondent far exceeded the prescribed maximum limit of election expenses and engaged on payment more persons than the number permitted by law. In the list, that the petitioner has filed along with the election petition, he has shown that the respondent No. 1 engaged school teachers of the Ranvir Higher Secondary School of Amethi and also grown up students for purpose of canvassing, who were paid from the Estate Treasury. The Manager, the Assistant Manager, the Zileedars and their clerks and peons all worked for over two months for the respondent No. 1 and their pay for the period was not shown in the return of election expenses. Then again, it was mentioned that a Bhajnik was engaged by the respondent No. 1 on payment of Rs. 5 per day and that Rs. 275 were paid for repairs of cycles etc. and that a large sum of money was also spent over tea and dinner given to the party people which were not shown in the return. It is finally alleged that if all these expenses had been shown the amount would have far exceeded the amount (Rs. 6,592-15-3) shown by Kunwar Rananjaya Singh in his return of election expenses and would have surely exceeded the maximum limit of election expenses (Rs. 8,000).

Besides the above, it was also made out in the petition that the respondent No. 1 had taken assistance of a number of Government servants to further the prospects of his election, and that various friends and well-wishers of respondent No. 1 incurred expenses not authorised in writing, in holding public meetings etc. and upon advertisements and other circulars and publications.

The petitioner thus challenges the election of Kunwar Rananjaya Singh on the grounds of corrupt and illegal practices mentioned above and claims that the election of the respondent No. 1 be set aside, and that the petitioner be declared to have been duly elected.

Kunwar Rananjaya Singh, the elected candidate is alone contesting this petition, and in his written statement he not only denied the charge of corrupt practices made against him but also filed a petition of recrimination challenging the conduct of the petitioner at the time of election. In the course of his written statement Kunwar Rananjaya Singh alleges that the charge that he bribed the electors in this Constituency is wholly false. He denies that he ever promised to give service to any influential person within this Constituency and further says that he never promised financial aid to any schools in the villages mentioned in the petition. It is to be noted that nearly 90 per cent. of the villages of this Constituency lay in the Zamindari of Kunwar Rananjaya Singh's father. Kunwar Rananjaya Singh respondent No. 1, positively denied that he ever offered dinner or tea party to anybody within this Constituency, or that he ever abused the petitioner in public meetings or that he issued defamatory statements in press or through distribution of pamphlets.

On behalf of the respondent No. 1 it was admitted that the Manager and the Zileedars and some peons certainly helped him in the election, but as they were Estate servants their pay was not shown in the return of election expenses. That he concealed no election expenses and did not engage any Bhajnik for his election meetings, nor asked the teachers and students of Ranvir Higher Secondary School to help him in distributing leaflets and to carry on canvassing for him.

Respondent No. 1 vehemently denies the allegation that he ever held out any promise to his tenants that he would reduce their rents if they voted for him or that he had already reduced their rents. That the pamphlet (Ex. 7) alleged to have been published in the name of Lal Bahadur Singh was a faked document, and that he never got it printed, issued or distributed.

It may be mentioned here that in the course of the allegations made in the petition the petitioner had mentioned that Kunwar Rananjaya Singh, his Manager, and his Zileedars went about telling people that Sri Bajinath Singh, the petitioner, was a thief and a dacoit and that the petitioner's gun had been seized in the course of investigation of a dacoity which had taken place in September, 1951, at Tikri. This allegation was also denied by the respondent No. 1. That is to say, the respondent No. 1 asserted that he never made any public charges of this nature against the petitioner.

Besides denying the allegations made in the petition, the respondent No. 1 also filed a petition of recrimination in which he alleged that the petitioner, Sri Bajinath Singh, himself exercised undue influence and interfered with the free exercise of the electoral rights of voting inasmuch as he, as a member of the District Board of Sultanpur, threatened Shri Sheo Kumar Upadhaya, Head Master of a school run by the District Board, to get him transferred to a distant place if he did not vote for the petitioner and that he also addressed meetings in villages Kalkan and Jungle Tikri where he threatened the voters that if they did not vote for the petitioner, he would get their houses burnt down and have them sent to jail, as he was a candidate on behalf of the Congress Government. It was further alleged in the course of recrimination charge that, the petitioner procured the aid of government servants, in the shape of Panches of Panchaiti Adalat and Sarpanches of different villages to enhance the chances of his success in the election. That the petitioner spent Rs. 444-2-0 as gratification to electors to vote for him and also distributed blankets for the same purpose. That the petitioner also incurred some unauthorised expenditure like payment of Rs. 305 to one Jagdish Prasad, Copyist, which was not shown in his return of election expenses and that this expenditure offended against Rule 118 framed under the Representation of People Act, 1951. The respondent No. 1 brought out these charges of recrimination against the petitioner by means of a separate petition. Sri Bajinath Singh filed a reply to these allegations made in the recrimination in which he denied them in toto.

After filing a reply to the recrimination an application for amending the relief in the petition was filed on behalf of the petitioner on 31st October 1952, in which

he prayed for the deletion of the second relief, namely, "that he be declared to have been duly elected". The respondent No. 1 contested this application for amendment, and we disallowed the amendment application by our order dated 2nd December 1952, which is annexed as Appendix "A" to this judgment.

The pleadings of the parties gave rise to the following issues

#### ISSUES

1. Did respondent No. 1 personally or through others commit the acts detailed in para (4) of the petition and Part I of the list?

Did these acts amount to bribery?

2. Did respondent No. 1 publish or get published the statements detailed in para. (5) of the petition and part II of the list?

Were the statements false? Does such publication amount to a corrupt practice?

3. Did respondent No. 1 employ for election more persons than authorised by law?

Did respondent No. 1 incur the expenditure shown in the list as "Heads of other concealed expenditures"? Did he exceed the prescribed limit of expenditure for election?

4. Did respondent No. 1 take help from Government servants as detailed in Part IV of the list?

5. Would the petitioner have obtained majority of votes but for the illegal and corrupt practices committed by respondent No. 1?

6. Whether the respondent's election was materially affected as a result of the said corrupt practices?

7. Can respondent No. 1 be not held responsible for the said corrupt practices for reasons given in paras. 16 and 17 of the W.S.?

8. To what relief, if any, is the petitioner entitled?

#### FURTHER ISSUES (UPON RECRIMINATION)

9. Did the petitioner exercise undue influence as stated in para. (5)' and Schedule A of the recriminatory petition?

10. (a) Were the persons mentioned in Schedule B serving under the government of Uttar Pradesh?

(b) Did the petitioner receive or attempt to receive assistance for the election from these persons or any of them?

11. Were the two amounts mentioned in Schedule C of the recriminatory petition paid by the petitioner as illegal gratification?

12. Did the work taken by the petitioner from Jagdish Prasad and the payment made to him amount to employment as contemplated by rule 118 of R.P. Rules, 1951?

Was Jagdish Prasad engaged in violation of the said Rule 118?

13. Is the Return of Election Expenses of the petitioner false as stated in para. (9) of the recriminatory petition?

14. Is the Return of Election Expenses false in material particulars as stated in para. (9) and Schedule E of the recriminatory petition?

15. Has the petitioner made a false declaration verifying his Return of Election Expenses?

#### FINDINGS

**Issue No. 1.**—This issue relates to paragraph (4) of the petition and Part I of the list. The petitioner, we find, has levelled nearly half-a-dozen charges against the successful candidate, Kunwar Rananjaya Singh, respondent No. 1 (who hereinafter will be referred to as the respondent), under this head.

This is essentially a charge of bribery. The respondent is supposed to have indulged in corrupt practices by making payments in cash or kind or by making promises to various persons under various circumstances, and it is asserted that these are such corrupt practices which must go to avoid the respondent's election. The first charge under this head is that the respondent or his agents actually promised to one Ram Lakhan Singh of Korari Hir Shah, Zildarship in the Amethi Estate owned by the father of the respondent, on the condition that the said Ram Lakhan would work in the election for the respondent No. 1. It is also alleged

that after the declaration of the election results, Ram Lakhan Singh was actually appointed a Zileदार and was posted to Tikri circle in the Amethi Estate. It is further said that a similar promise was made to Sarjoo Singh, resident of Dwara Ghatampur, who was to be appointed as a peon on condition that he worked for the respondent and canvassed for him.

In reply to these charges, it has been urged on behalf of the respondent that in fact Ram Lakhan Singh had been appointed an assistant to the Zileदार at Tikri under ordinary circumstances and in due course of management of the Estate, and that the petitioner has built up a story of promise and bribery on the basis of this fact. On behalf of the petitioner several witnesses were examined to prove that Ram Lakhan Singh and Sarjoo Singh both were definitely and openly promised different election meetings that were held during the election period. The petitioner actually examined five witnesses to prove the promise made to Ram Lakhan Singh. The first witness is Ram Dulare Singh (P.W. 1). This witness makes a general statement that services to each and every body present in the meetings was promised at Korari Hir Shah on behalf of the respondent. He however, admits that these promises were not kept. A general statement of this nature has no value. No estate, however big, can afford to offer services to all and sundry who might help the owner of the estate at the time of elections. Witness (No. 2) Fateh Bahadur is Sabhapati of a Gram Sabha. He only mentions that both these persons, namely Ram Lakhan and Sarjoo Singh, did actually work for the respondent by distributing leaflets etc. The next witness for the petitioner on this point is Sri Har Charan Gupta (P.W. 12), who was a candidate for the Assembly election on behalf of the Revolutionary Socialist Party from Amethi (Central) Constituency. He too in the course of his deposition, stated that the respondent had personally promised that he would confirm Ram Lakhan as a Zileदार if the latter helped him in canvassing. This particular witness stood up against the respondent in this election and lost miserably. He evidently also lost his security money. He is certainly favouring the petitioner in this case, and it is not possible to rely implicitly on the prejudiced statements of this particular witness. Sri Baijnath Singh, the petitioner, has also come into the witness box, and has stated on oath that promises were made to Ram Lakhan Singh and Sarjoo Singh both. The petitioner is necessarily an interested person and, therefore, we shall not discuss his statement at length at this stage. Har Saran Singh (P.W. 14) is a cultivator within the Amethi Estate. He has tried to prove all the facts that have been mentioned in the petition on behalf of the petitioner, and, therefore, he is a very important witness. He deposed to the effect that he had been appointed by the respondent on Rs. 2 a day for doing his election work, and thereby tried to show that he was in a position to know all the illegalities committed by or on behalf of the respondent. We find from the statement of this witness that, he is not an independent person at all. He was a tenant of the Amethi Estate and admittedly some suits for arrears of rent were pending against him at the time of the Elections. He admitted in the course of his cross-examination that he had to pay up all these arrears ultimately.

As has been observed above, this witness claims that he was getting Rs. 2 a day from the Estate for doing election work. It is to be noted here that the name of the witness Har Saran Singh does not appear at all in the return of election expenses submitted on behalf of the respondent. The witness also admitted that the pay which he was supposed to be drawing from the Estate was not set off towards his arrears of rent. If the man had really been working for the respondent, we should have expected that his pay and arrears of rent had been adjusted. But the absence of such adjustment certainly goes to show, that, the statement of this witness on this point is not free from doubt. Besides, we find from the course of his cross-examination that in the petitioner's return of election expenses there is a mention of one Har Saran Singh. The respondent, therefore, challenged the statement of this witness in the course of the latter's cross-examination by asking him if he was not working for the petitioner at the time of the Elections. The witness, however, denied this statement. These are the witnesses who claim to prove that Ram Lakhan Singh had been offered a post on certain conditions.

On behalf of the respondent these allegations have been denied altogether. Ram Sewak Singh (D.W. 14) and Ram Autar Singh (D.W. 16) admitted that Ram Lakhan Singh was already working as a clerk of the Zileदार, so probably he too was helping the respondent at the time of elections. Ganga Bux Singh (D.W. 17), appearing on behalf of the respondent, alleged that Ram Lakhan Singh did not do any election work at all. Besides these witnesses, the respondent also examined Kedar Nath (D.W. 31), Shyam Bahadur (D.W. 36), Ram Khelawan (D.W. 39) and the Manager of the Estate, Sri Suresh Chandra Misra (D.W. 40). Ram Khelawan (D.W. 39) was an accountant in the Estate. At the time of

election he was put in charge of the election office of the respondent and evidently knew how the money was being spent in this election. It is true that he is a servant of the Estate and, therefore, essentially an interested witness. But the fact remains that the witnesses produced on behalf of the petitioner are not particularly reliable, and so it cannot be held in fact that Ram Lakhan Singh who was actually working in the Estate at the time of election as a clerk and was subsequently appointed a Zileedar when one of the Zileedars of the Estate had resigned (as per statement of the Manager), had been really promised a post provided he worked for the respondent.

The petitioner's case about Sarjoo Singh is equally unreliable. On behalf of the petitioner, four witnesses were produced to prove that Sarjoo Singh also worked at the time of election on promise of service. These witnesses are Fateh Bahadur (P.W. 2) against whom a decree for Rs. 300 for arrears of rent is still outstanding in favour of the respondent's father; Jang Bahadur Singh (P.W. 5), who did not mention about any promise; Sitla Bux Singh (P.W. 6), who only heard from Sarjoo Singh that he had been promised a job, and Har Saran Singh (P.W. 14), who wanted to make out that Sarjoo Singh along with him worked for the Estate on Rs. 2 a day. These witnesses have actually proved nothing against the respondent in regard to the alleged promise. The respondent, on the other hand, produced Ram Harsa Singh, Ram Khelawan (D.W. 39) and his Manager (D.W. 40) to disprove this allegation. We have shown from the evidence adduced on behalf of the petitioner that the allegations have not been clearly proved. It is hardly necessary to discuss on this point the testimony of witnesses who came on behalf of the respondent. The charges under this head have not been established.

It now becomes unnecessary to examine the legal question whether employing paid persons merely for canvassing amounts to 'bribery' as defined by Section 123(1) of the R.P. Act, 1951.

The next charge under paragraph (4) (b) of the petition consists in promising financial aid to two local schools, provided the residents of the locality who were interested in the improvement of the schools, voted and secured votes for the respondent. Under this head it is specifically mentioned in the schedule that, the respondent promised Rs. 500 for constructing a well near the school at Korari Hir Shah, and that he further offered Rs. 2,000 for building purposes to a Higher Secondary School at Bargaon, on the same condition. It is to be noted that this alleged bribe in the shape of promise to the local schools was made to the interested people of the locality, and not specifically to the members of the managing committees of these schools. The school at Korari Hir Shah according to the petition, was promised Rs. 500 for the construction of a well. Ram Dulare Singh (D.W. 1) who was also examined on this point, stated that in an election meeting held in Korari Hir Shah the respondent actually promised Rs. 2,000 to the local school for building purposes and Rs. 500 for a well. This witness probably heard something about the payment of Rs. 2,000 to some school. In the witness-box he mixed up both the items, and stated that these two items were promised for this school at Korari Hir Shah. This is not even the case of the petitioner. We are unable to believe this witness. Besides P.W. 1, the petitioner also examined Fateh Bahadur (P.W. 2) to prove that in his village, Kanaksinghpur, the respondent promised money for constructing wells and a tank. This statement also does not prove the allegation made in the petition that Rs. 500 had been promised for constructing a well for the school at Korari Hir Shah. The evidence about the alleged promise at the said meeting is vague and indefinite, and does not relate to Korari Hir Shah; and, therefore cannot be relied upon. The respondent denied the allegations altogether. He produced Ram Sewak Singh (D.W. 14), Ram Autar (D.W. 16) and the Manager (D.W. 40) on this point. The Manager, who happened to be present with the respondent in every election meeting, which was held, is certainly in a position to say what actually happened or was said there. He, too, denies that any promise was made at Korari Hir Shah. It is an admitted fact that no payment of this nature was made before or after the election. It is very doubtful if any such promise was actually made. We, therefore, decide this point against the petitioner.

The evidence regarding the promise of Rs. 2,000 made for the school at Bargaon is equally unreliable. Har Charan Gupta (P.W. 12) and (P.W. 13) the petitioner himself, tried to prove that in a meeting at Bargaon a sum of Rs. 1,000 was paid in cash to the school authorities at the time of the meeting, and that more money was promised to be paid subsequently. The statement is positively different from the allegations made in the petition. It is, therefore, not possible to rely on these statements. We may mention, here, that Bharat Singh (D.W. 28) and Raghunandan Singh (D.W. 29), who both belonged to Bargaon, clearly

denied that any promise was made on behalf of the respondent of the nature alleged in the paragraph (4)(b) of the petition. The Manager, too, denied these allegations. Considering the evidence produced on behalf of the parties, we come to the conclusion that the petitioner has failed to prove that the respondent made any promise that he would pay big subscriptions to the two schools in the two villages provided the residents helped him in the Elections.

The next point for determination is the charge made out in paragraph (4)(c) of the petition.

It is alleged that the respondent entertained the leading persons of the villages within the Constituency once to a tea party on 23rd January 1952 at Ramnagar Kothi where the respondent resides, and also to a dinner at the Manager's bungalow at Amethi in order to support his candidature. Both these allegations have been vehemently denied on behalf of the respondent. Both these questions are of facts, and should have been proved by producing people who actually attended these parties. In the list of witnesses filed on behalf of the petitioner, 22 persons were mentioned in this connection, but none was produced. Two men out of this list were summoned, but they too were not produced.

It is alleged that a tea party was held on 23rd January 1952. Ram Dulare Singh (P.W. 1) who came to prove this fact, did not attend any tea party. He describes that a feast was held at Ramnagar where the caste people, namely Thakurs of different villages, were invited. This is not the petitioner's case. No dinner according to the petition was held at Ramnagar. The idea of this particular witness about the feast is rather vague. It is not possible to rely on him. Har Saran Singh (P.W. 14), who was produced to prove every allegation made in the petition, stated that a tea party was held at the respondent's Kothi. It had been suggested that this witness had actually issued the invitations, but in the witness-box this man denied this allegation. The oral evidence regarding this point about the tea party at Ramnagar is not convincing at all. However, on behalf of the petitioner it was pointed out from an entry in the respondent's return of election expenses that, on 23rd January 1952 Rs. 102/8/- were paid to one Ghurau Halwai for "*Peras and Dahi*" for entertaining prospective polling agents who had been summoned for training purposes. Probably this story about a tea party was made out by looking into the return of election expenses of the respondent. We do not consider that "*paras and Dahi*" could have been utilised for any tea party. The statements of the respondent's witnesses Ram Autar (D.W. 16), Ganga Bux Singh (D.W. 17), Ram Khelawan (D.W. 39) and the Manager Sri Misra (D.W. 40) are clear on the point. We find that this money namely Rs. 102/8/- were really spent for entertaining the prospective polling agents, and not for any tea party as alleged on behalf of the petitioner.

Similarly, there is no satisfactory evidence about the dinner. The petitioner examined himself and Bhawani Prasad Singh (P.W. 7), a neighbour living in Korari Lachhan Shah and the omnibus witness Har Saran Singh (P.W. 14) to prove the fact of the dinner. We have already mentioned that, none of the witnesses given in the list has been examined at the trial. Several witnesses on behalf of the respondent denied these facts including Ram Autar (D.W. 16), Ganga Bux Singh (D.W. 17), Ram Khelawan (D.W. 39) and Sri Suresh Chandra Misra (D.W. 40).

The evidence on record, thus, does not prove the allegations about tea and dinner, and we, therefore, decide the point against the petitioner.

Next, we come to the charge levelled against the respondent in paragraph (4)(1)(d) of the petition, wherein it is alleged that the respondent had given publicity to the fact that he would remit the rent of his tenants if they supported his candidature and voted for him, in election meetings held at Shardan, Amethi, Dwara, Tikri, Thingaha Bazar and Mela Kalikan Bhawani and other places. It is also alleged that the respondent distributed a leaflet (Ex. 7) containing this promise publicly in these meetings, and at different places.

The petitioner has examined in all fifteen witnesses to start with. We have already mentioned above that the testimony of the witnesses produced on behalf of the petitioner cannot always be relied upon. We have shown that some of these witnesses are interested persons, and some are the tenants of Amethi Estate, against whom arrears of rent decrees were still outstanding. Anyway, we must take into consideration each and every charge that has been made by and on behalf of the petitioner, and see if any particular charge has been brought home to the respondent. It has to be noticed here, that promise about this reduction of rent is also conditional. We have heard the witnesses of both the parties who were tenants of the Estate, and we find from their depositions that actually no

rent remission was given to anyone of them. It also appears that suits for arrears of rent were filed against some of the witnesses, but not one of them claimed reduction of the rent by confronting the Amethi Estate with the promise which the respondent is alleged to have made. In the list filed along with the petition, the petitioner mentioned six places where this promise was openly made by the respondent, his Manager, and Zileendars in meetings held in connection with the election campaign. Out of these six places, no evidence has been given about any meetings at village Dwara. We shall, therefore, not refer to it in the course of our judgment.

It is said that in two meetings held at Shardan Bhawani, Kunwar Rananjaya Singh, the respondent his Manager (D.W. 40), and his Zileedar, addressed the meetings and every one positively stated in these meetings that the Estate had already reduced the rents by half. The witnesses examined by the petitioner for the meetings at Shardan Bhawani are Jang Bahadur Singh (P.W. 5), Sitla Bux Singh (P.W. 6). The first of these witnesses is a member of the local Congress Mandal, and admitted that he had canvassed for the Congress. He is a Pukhtedar, and admitted that a case of arrears of revenue is still pending against him, having been filed by the respondent's father. The other witness was a polling agent of the petitioner, and admitted that he had canvassed for him. Their statements do not prove exactly the allegation made in the petition, but go to show that there was no conditional promise, but in fact the rent had actually been reduced. The witnesses are partymen of the petitioner and, therefore, no reliance can be placed on their testimony. One more witness, namely, Har Saran Singh (P.W. 14) was also examined on this point. We find that this witness is too much interested in the cause of the petitioner, and so we find it difficult to place any reliance on his evidence. As against these witnesses, the respondent examined Capt. Mathura Singh (D.W. 25) a retired military officer, who came to state that he was in the village when the election meetings were held, and that the respondent made no such promise. He is an independent man, and we do not see how his statement could be overlooked altogether. Besides this witness, the respondent also examined Ram Bharosey (D.W. 37) who also denied that the respondent had promised to reduce rent or had actually reduced rent in any of the meetings which he attended. The Manager (D.W. 40) is the last witness on this point. He is actually representing the respondent in this case. As he is managing the whole show on behalf of the respondent, we shall not always refer to his evidence in this case. His position almost is like that of the respondent and, therefore, he is bound to be a partial witness. Anyway, it was alleged on behalf of the petitioner that the Manager himself spoke in these meetings, and promised to reduce the rents. This fact clearly and unconditionally has been denied by the Manager. We have considered the evidence on the record, and we are decidedly of the opinion that it is not sufficient to prove that the respondent made any such promise at Shardan Bhawani.

As regards Amethi meetings, the petitioner has examined himself and one Bhawani Prasad (P.W. 7). The petitioner is resident of Korari Lachhan Shah. Bhawani Prasad also is a neighbour of the petitioner. Bhawani Prasad alleged that he had attended a feast given by the respondent at the Manager's bungalow, where some 400 guests from 20 or 25 villages attended. This witness tried to prove that Raja Sahib, father of the respondent, himself spoke in those meetings and promised reduction of rents. We have held that there was no such feast, and so the statement of this neighbour of the petitioner is anything but the truth. The statement of Baijnath Singh the petitioner in this connection appears to be rather unusual. It is said that he was present in one of the meetings held by the respondent. It is rather doubtful that the respondent would make such promises in meetings when Baijnath Singh the petitioner, was present in person. As against this evidence the respondent has examined Sri Vijai Pal Pande (D.W. 18) a pleader, who has been practising in Amethi for a long time, and also examined Sri Chandra Bhan (D.W. 24) another pleader, who has been helping the respondent in this case. Besides these witnesses, Ram Khelawan (D.W. 39) and the Manager were also examined to deny the allegation. We shall only refer to the statement of D.W. 18, as the others are more or less interested in the respondent's case. Sri Vijai Pal Pande (D.W. 18) is himself a big tenant. He denies that there was any promise of reduction of rents. It is impossible to believe the allegations made on behalf of the petitioner that the Estate had reduced the rent by half. What we mean to observe is that no Estate, however big, can afford the luxury to make this reduction by half.

Considering the evidence as it stands, we come to the conclusion that there is no truth in the allegations about the promise of reduction of rents by half at Amethi



The other meetings, about which evidence has been given, were at Tikri, Thingaha Bazar, and Kalikan Bhawani. Baijnath Singh himself, and Har Saran Singh whom we have referred to above as an omnibus witness and one or two interested persons—like Har Charan Gupta (P.W. 12), the rival candidate who is now helping the petitioner, came to prove that, there was promise of reduction of rent in meetings held at these villages. Har Saran Singh, however, admitted that nobody's rent was actually remitted before or after the elections. If there had been any truth in this allegation we would have certainly found some mention of it in some case for arrears of rent. In the absence of any evidence to that effect, it is not possible to believe that, the respondent was making those wild promises to his tenants. Kedar Nath (D.W. 31), Ram Padarath (D.W. 32) and Shyam Bahadur (D.W. 36) came to deny the charges about the Tikri meetings. Ram Padarath is a big tenant. His rent was not reduced. Kesho Ram Misra (D.W. 21) and Sant Prasad (D.W. 22), both of Thingaha Bazar denied about rent reduction promises in meetings held in their village. And lastly, D.Ws. 19, 23, and 35 denied the charges about Kalikan Bhawani meetings. These witnesses, however, we find have nothing in common with the respondent. They were probably his tenants before the Zamindari was abolished. But now they have nothing to fear from the Amethi Estate. Their evidence is certainly more valuable than that of the petitioner's witnesses.

It is necessary for the petitioner to prove every allegation of irregularity or corrupt practices independently. The evidence which the petitioner has produced is not sufficient to prove that there was any promise of rent remission at any of the five places. We, therefore, hold that on fact the petitioner has failed to prove that, the respondent had tried to bribe his tenants by promising reduction in rents. Some of the witnesses on behalf of the petitioner tried to show that the promise was made to the tenants if they actually voted for the respondent to the knowledge of the Estate employees. This was an impossible task. We, therefore, come to the conclusion that on the strength of this oral evidence it cannot be held that the respondent promised to reduce rents if the public or his tenants voted for him.

We shall now take up the documentary evidence on which reliance has been placed on behalf of the petitioner to prove this promise. This is a leaflet marked Ex. 7 which is alleged to have been signed by one Lal Bahadur Singh, an agent of the respondent and widely distributed in the Constituency. The existence and distribution of this leaflet has been totally denied by the respondent. It appears from this leaflet that one Lal Bahadur Singh of Semra got this leaflet printed on 20th January, 1952 from Vinod Press at Kanpur, in which he canvassed for the candidature of the respondent and specifically mentioned in it that the respondent had actually reduced the rents of the tenants within his Zamindari.

In this connection it will have to be seen if Lal Bahadur Singh of Semra had any connection with the respondent, that is to say, if he was his agent for this purpose, and if Lal Bahadur Singh got the leaflet printed at Kanpur to the knowledge of the respondent and by his connivance, and lastly it will have to be seen if this leaflet was distributed by and on behalf of the respondent in the Constituency. We have already mentioned that the existence of this leaflet has been totally denied by the respondent. There is no mention of any expenses incurred for getting this leaflet printed, nor of any money paid to Lal Bahadur Singh or anybody else for going to Kanpur, in the return of election expenses filed on behalf of the respondent. It is asserted by the petitioner that the respondent not only got this leaflet quietly printed at Kanpur, but he also committed an irregularity by not mentioning the expenditure in the return of election expenses. At the present moment we shall deal with the actual printing of this leaflet, and shall come to the other points just mentioned above at a later stage.

Lal Bahadur Singh, the most important witness on this point, has not been examined in this case by any of the parties. An attempt has been made by the petitioner to show that, Lal Bahadur Singh had come to court on 7th January, 1953 to depose on his behalf, but was suddenly kidnapped by Ram Khelawan (D.W. 39) in the Manager's car and was removed from Allahabad. In this connection we shall refer to an application moved by the petitioner on 7th January, 1953 (paper No. 106/D), in which he stated that Lal Bahadur Singh had been kidnapped by the respondent's men. There is no mention of Ram Khelawan's name in this application. Paper No. 107/D is the denial filed by the respondent immediately on that date. In this denial the respondent pointed out that the Manager's car was still in the court compound. On 8th January, 1953 another application was moved by the petitioner claiming that Ram Khelawan had kidnapped Lal Bahadur Singh, and in this he asked for an issue of warrant against the latter.

No reply to this application was filed. It is now suggested that the allegations made in the second application were correct, so no reply was filed. The Tribunal directed the petitioner to get a summons served on Lal Bahadur Singh in the ordinary course, and even then if he did not appear warrant might be issued against him. The respondent points out that as the Tribunal passed orders on this second application, there was no necessity to file a counter affidavit.

It is not necessary to record a definite finding about the alleged kidnapping. It is, however, necessary to refer to the statement of Ram Khelawan, who stated that he was not at Allahabad on 7th January, 1953 as he had already left the previous evening for Amethi to fetch some papers. On behalf of the respondent reliance has been placed on an application dated 5th January, 1953 in which the respondent asked the Tribunal for summoning certain papers through witnesses, who were being produced on behalf of the petitioner at that time. On this application the Tribunal passed an order on 6th January, 1953, and Parwana was issued to the respondent's lawyer to that effect on that very date. It has also been shown that someone carried this Parwana to Amethi on the 6th and papers were filed, as required on 8th January, 1953. Ram Khelawan's case is that it was he who went with the Parwana on the 6th, and was at Amethi on 7th January, 1953, and so he could not have been the man who kidnapped Lal Bahadur Singh, if at all. It has also been shown on behalf of the respondent that the absence of Ram Khelawan's name from the application of the petitioner made on 7th January 1953 in a way supports the allegations made by Ram Khelawan. This is the nature of the evidence that is before us. We have already mentioned above that it would not be proper to come to a finding about the actual fact of kidnapping. The case can be decided without entering into this controversy at this stage, as this is only a side issue.

The main point for consideration in this connection is, if Lal Bahadur Singh was an agent of the respondent, and whether he got the leaflet printed at the instance of the respondent. The petitioner has relied on a polling agent form of the respondent appointing Lal Bahadur Singh a polling agent at Korari Hir Shah polling station. This is Ex. 15. This document is signed by Lal Bahadur Singh and also by Kunwar Rananjaya Singh, the respondent.

On the strength of this document the petitioner has made out a case that Lal Bahadur Singh was not only a polling agent but was a regular agent of the respondent helping and canvassing for him; and that it was he who got the leaflet (Ex. 7) printed at the cost of the respondent to the latter's knowledge in which it was specifically mentioned that the Amethi Estate had in fact reduced the rents of its tenants, and, therefore, the latter should vote for the respondent.

The petitioner has attempted to prove that Sri Chandra Bhan, a pleader of Amethi, who has been helping the respondent in this election, took Lal Bahadur Singh and Har Saran Singh, two men who had been engaged by the respondent to work at the time of the election, to Kanpur on 20th January, 1952. It is said that they started from Amethi by the midday train, and after changing over at Lucknow reached Kanpur in the evening of 20th January, 1952 which was a Sunday. That these three men went to the Vinod Press direct from the station and there they met the Manager of the Press, one Sri Brij Behari Avasthi (P.W. 8). According to the petitioner's story, an order was placed with Sri Brij Behari for printing 10,000 copies of this leaflet, a manuscript of which was given to the Manager of the printing press. This manuscript is Ex. 6 on the record. It is further stated that this manuscript (Ex. 6) originally had not been signed by any person. Sri Brij Behari declined to print the leaflet without any signature and, therefore, Lal Bahadur Singh of Semra signed this leaflet in the presence of the printing press manager. The contract was settled for Rs. 70 and Rs. 35 were advanced on 20th January, 1952 to the manager, for which, however, no receipt was issued on that date. As the printing could not be done within a day, Sri Chandra Bhan came away from Kanpur leaving the two servants, namely Lal Bahadur Singh and Har Saran Singh, at Kanpur somewhere in a hotel. That these two persons again went to the printing press on 22nd January, 1952, when 10,000 copies of this leaflet were delivered to them and the remaining amount of Rs. 35 was paid, for which the press manager issued a consolidated receipt for Rs. 70. The account book of the press and the carbon copy of the cash voucher are on the record. It is, thus, alleged that Lal Bahadur Singh who was only a polling agent, not only actually signed the manuscript for this leaflet but was also accompanied by a person, namely Sri Chandra Bhan, the pleader who was admittedly an agent for all practical purposes for the respondent. Thus, it is argued that the respondent is responsible for all that appears in this leaflet.

The whole story has been totally denied by the respondent. The respondent's manager (D.W. 40) says that neither Lal Bahadur Singh nor Har Saran Singh had ever been engaged by him as servants. That Sri Chandra Bhan was busy in his private court work at Amethi on 20th January, 1952, and had actually gone for local inspection on that date with the Tehsildar, and so he neither could, nor did go to Kanpur for this purpose. It is also suggested on behalf of the respondent that these papers (Exs. 6 and 7) were prepared for the purpose of this case, at the instance of the petitioner, and that the whole thing is a trumped-up story.

The first document in this connection is Ex. 6, the manuscript, from which, it is said, the leaflet (Ex. 7) was printed. This manuscript was produced by Sri Brij Behari, the press manager. Before we enter into the statements of the two witnesses of petitioner on this point, namely Sri Brij Behari (P.W. 8) and Har Saran Singh (P.W. 14), we must refer to the condition of this manuscript (Ex. 6). It is not known who wrote out this manuscript. It bears the signature of one Lal Bahadur Singh. As two witnesses were produced on behalf of the petitioner to prove that Lal Bahadur Singh actually signed it in their presence no attempt was made to get the admitted signature of Lal Bahadur Singh on Ex. 15 compared with his alleged signature on Ex. 6 by an expert. Lal Bahadur Singh was not produced by any of the parties. We have, therefore, to fall back on the evidence that is on the record. The two signatures that is, the admitted one on Ex. 15 (the polling agent form) and Ex. 6 (the manuscript) look alike, but it cannot be said positively that they are of the same party. The spelling of the two signatures are not the same. They are shaky signatures, and so from a cursory glance they look somewhat like each other. The manager of the press produced the manuscript (Ex. 6). The paper is absolutely clean and without any ink or lead mark on it. An expert from "The Leader" press, Sri Raghubir Prasad (D.W. 41) was produced on behalf of the respondent. This witness saw the sheet of paper (Ex. 6) very closely, and stated that from the appearance of Ex. 6, it appeared that it had not passed through the compositor's hands. To a layman even, this appears to be most probable. The statement of Sri Brij Behari about this sheet of paper (Ex. 6) and about the signature of Lal Bahadur Singh on it appears to be far from the truth. It is possible that someone posting this paper in his presence. Beyond that nothing could be said in his favour. Not only this, but we find that there are one or two differences between the wordings of this manuscript with that of the leaflet (Ex. 7). For instance, in the leaflet the word "Tarikh" is noted under the signature of Lal Bahadur Singh. In Ex. 6 (the manuscript) the word is 'Dinank'. It appears to us that someone prepared the manuscript from the notice, and handed it over to Sri Brij Behari for producing in court. Sri Brij Behari also produced in court his account book and the cash receipt book. The accounts are written in an ordinary copy book which could be obtained from the market. The account of this particular transaction appears on pages 3 and 4 of this book. There are two dates on which entries have been made. The first entry of Rs. 35 is made on 20th January, 1952, and the second entry is on 22nd January, 1952. On both these dates, it is said that the manager received Rs. 35. The copy of the cash receipt on the receipt book is also dated 22nd January, 1952. This is a receipt for a consolidated sum of Rs. 70. It is the third receipt on this booklet. It has been pointed out to us that the second receipt is dated some day in February, 1952, which date was subsequently corrected. If the second receipt was issued in February 1952, the third receipt could never have been issued in January, 1952. By inadvertence a man, at the time of putting down a date, may mention a former month, but never a subsequent month. The whole thing appears to be so doubtful that it is not possible to place any reliance on the documents filed by Sri Brij Behari (P.W. 8).

It will be noted that the address of Lal Bahadur Singh was given in the press as 'care of Sri Chandra Bhan, Vakil of Amethi'. Sri Chandra Bhan is a pleader, and it is suggested that he got this notice printed surreptitiously at Kanpur to avoid suspicion falling upon any agent of the respondent. If this be so, we find it impossible to believe that Sri Chandra Bhan would lend his name along with Lal Bahadur Singh to the press. Besides the manager of the press Sri Brij Behari the petitioner produced Har Saran Singh (P.W. 14) to prove this story about their visit to Kanpur. We have already mentioned that Har Saran Singh is a witness, upon whom the petitioner has relied to prove almost each and every fact. We find from his cross-examination that he was formerly a four-anna member of the Congress, and so it appears to us that he is still interested in the Congress candidate. Several witnesses produced on behalf of the respondent have alleged that, this man was actually working for the petitioner. He is a person, who knows all about election work. Evidently, he worked for one of the parties. The way he has tried to support the petitioner's case goes to show that, he is a partymen of the petitioner and his statements are anything but the real truth.

Several other leaflets have been filed in this case. Only this leaflet (Ex. 7) bears a date. That is to say, whoever got this document printed saw to it that, it should be dated so as to show that it had been printed and published before the date of polling.

As against this story, the respondent has examined several witnesses. It is said in the course of the depositions of these D.W.s. that, a criminal case 'Jagrup v. Sukhdeo', was pending in the court of the Tehsildar of Amethi, Sri Vijai Pal Pande (D.W. 18), a lawyer of Amethi, was appearing in it for the complaint, and Sri Chandra Bhan (D.W. 24) was a lawyer for the defence. The record of this case has been summoned and copies of various documents have also been filed before this Tribunal. The respondent relies on the following documents. The first is Ex. UU the Vakalatnama of Sri Vijai Pal Pande. This is to show that, Sri Vijai Pal Pande actually worked in that case. Ex. TT is the Vakalatnama of Sri Chandra Bhan for the accused. It further appears that Sri Vijai Pal Pande filed an application (Ex. QQ) on 11th January, 1952 for a local inspection in that case. The Tahsildar-magistrate passed an order on this Ex. QQ on the same date that local inspection would be made on 20th January, 1952. The order sheet of that case is also before us. From this order sheet we find that certain witnesses were examined on 19th January, 1952. This order sheet is Ex. SS. On this order sheet there is an order on 19th January, 1952 that inspection would take place on the next day, i.e. on the 20th. Ex. RR is the inspection note of the magistrate, a reference of which will also be found in the judgment of that criminal case. These are the documents from which the respondent wants to show that Sri Chandra Bhan could not possibly have gone to Kanpur on 20th January, 1952, on which date he happened to be present with the Tehsildar at the local inspection. Sri Vijai Pal Pande (D.W. 18) deposed that he had actually appeared in that case and had gone to village Asura, to be present at the time of the local inspection. From his statement we find that the lawyers for the parties reached the spot at about midday and waited for the Tehsildar upto 3 p.m. in the afternoon. Sri Vijai Pal Pande is a lawyer who has worked for the respondent in this case. But merely on that ground we cannot over-throw his deposition, especially when it is supported by documentary evidence. Sri Chandra Bhan (D.W. 24) is another lawyer of Amethi. He, of course, denies the charges made against him by the petitioner's witnesses. He also stated that he was present in village Asura upto 3 p.m. in the afternoon, and therefore, he could never have been at Kanpur on that day. It seems to us rather strange that Sri Chandra Bhan should have taken two servants with him for getting for the leaflets printed. It might have been possible for him to take Lal Bahadur Singh as a companion, but we do not see why he should take Har Saran Singh along with him especially when it is alleged that he was making a secret visit to Kanpur. Jagrup (D.W. 12) and Sukhdeo (D.W. 13) the complainant and the accused of that criminal case, have also been examined on behalf of the respondent. They, too, support the story of Sri Chandra Bhan. Besides these persons Ram Khelawan (D.W. 39) and the Estate Manager (D.W. 40) were produced to deny the existence of Ex. 7. There is no reference of any expenditure to connect this leaflet with the respondent. The so-called evidence of *alibi* in connection with Sri Chandra Bhan is much more reliable, especially when it is supported by the entries in the order sheet of that criminal case and the lawyer's diary which was produced before us. We have considered the evidence adduced on behalf of the parties, and we come to the conclusion that the respondent, had nothing to do with Ex. 6 or Ex. 7 and, therefore, he cannot be held liable for the entries therein.

Besides this, the petitioner has examined witnesses to show that this Ex. 7 was distributed in various meetings. Ram Dulare Singh (P.W. 1) said that he saw the distribution of this leaflet at Korari Hir Shah. Kamta Prasad Tripathi (P.W. 3), an ex-student of Ranvir Pathshala, stated that he distributed this leaflet along with other students of that school. Shatrughan Prasad (P.W. 4) stated that he saw the leaflet distributed by the students of Ranvir Pathshala. Another witness Sitla Bux Singh (P.W. 6) who was a polling agent of the petitioner, produced a copy of Ex. 7 and tried to prove that he received this paper when it was being distributed in some meetings. A cursory glance at this document filed by P.W. 6 will show that, it is a fresh paper though it has been supposed to be lying with him for nearly one year. Besides these witnesses, Har Charan Gupta (P.W. 12) also stated that he was told by his supporters about meetings and distribution of this leaflet. Har Saran Singh (P.W. 14) lastly came forward to say that he had actually distributed Ex. 7 in meetings where the respondent was present in person, that is to say, with his connivance. We have already held that this notice had not been printed for the respondent at all. We have held above that none of these witnesses is an independent one. More or less, rent decrees of the Estate are pending against most of them.

The respondent, too produced a few witnesses, like Capt. Mathura Singh (D.W. 25) Kedar Nath (D.W. 31) Ram Bharosey (D.W. 37) to say that no such leaflet was distributed. The evidence on the record clearly shows that there is no truth in the allegation regarding the printing and publication of this document (Ex. 7) at the instance of the respondent. We, therefore, do not believe that the leaflet was distributed by respondent's men.

The question of agency has also been discussed before us. Sri R. N. Basu, appearing on behalf of the petitioner, urged that Lal Bahadur Singh was not only a polling agent, but was also an agent within the meaning of section 79(a) of the R.P. Act, 1951. We are unable to agree with this contention, because we find that the polling agent form (Ex. 15) was filed in by someone in the office of the respondent and the latter signed it on 21st January, 1952. The date for the signature of Lal Bahadur Singh is also 21st January, 1952. It appears from this polling agent form that the permission to Lal Bahadur Singh to act as a polling agent for the respondent was given by the Returning Officer on 23rd January, 1952, so that he might act as such on 31st January, 1952, the date of the poll.

It is urged on behalf of the respondent that Lal Bahadur Singh was appointed a polling agent on 21st January, 1952 for a specific purpose, so that he might work as a polling agent for the respondent on 31st January, 1952. Therefore, he was not a general agent as defined under Section 79, R.P. Act, 1951.

Section 79 of the R.P. Act, 1951, lays down that 'an agent includes an election agent, a polling agent, and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election, is held to have acted as an agent in connection with the election, with the knowledge or consent of the candidate'. It is necessary to mention that in the definition of agent the words "a polling agent and counting agent" have been included in this Act for the first time. Even though an agent may include a polling agent it is not necessary that the illegal and uncalled for activities of every polling agent must bind the principal. The activities of a polling agent within the scope of his employment will certainly bind the candidate; but any work outside his sphere of work will not affect the candidate in any way. Under the polling agent form, authority was granted to the polling agent for working as such on 31st January, 1952. Any other kind of work, especially if it be an illegal act, done before that date will be outside the scope of his agency, and therefore, will not affect the candidate. In this connection we shall rely on the observations made in an election case reported in Hammond Vol. II, page 191.

We are, therefore, of opinion that the general rule of law that a principal is liable and responsible for the acts of his agent, only if those acts were within the scope of his employment (though they may be against the express authority) applies to the election matters also, and the candidate is not liable for the acts of his polling agent done not on the polling date but previous to it and having nothing to do with the polling agent's proper work. There is no reliable evidence that Lal Bahadur Singh had done any work for the respondent, which may make him the respondent's agent.

The last charge under this issue is given in paragraph (4)(1)(e) of the petition. It is said that it was not a free election by reason of corrupt practices of bribery and undue influence which extensively prevailed at the time of election. We have seen above that the charge of bribery alleged in the petition has not been brought home to the respondent. As regards undue influence, there is no evidence at all.

We, therefore, decide this issue against the petitioner.

**Issue No. 2.**—This issue was framed on allegations made in paragraph (5) of the petition together with Part II of the list. Paragraph (5) of the petition makes out a general charge that the respondent not only published false statements in pamphlets but also got them distributed by his agents knowing them to be false or not believing them to be true. It is also alleged that the said false statements relate to the personal character and conduct of the petitioner, and that they were calculated to prejudice his prospects at the election. Part II of the list gives the particulars of this charge. Paragraph (a) of that list relates to a pamphlet marked Ex. I under the heading 'Five questions to the Congress candidate Baijnath Singh'. The signatory of this pamphlet is one Ram Khelawan Tripathi, an employee of the Estate. The petitioner's allegations are that these five questions were not only false but made out of such defamatory remarks against the petitioner that they considerably lessened his chances of getting votes from the public. We shall deal with these questions one by one, and how far they offend against Section 123(5) R.P. Act, 1951.

The pamphlet is in Hindi and the first question when translated will run like this:

"Are the accused of the Tikri dacoity case, who have been arrested and identified, your regular associates?"

Question No. 2 is—

"Whether your gun was seized by police in connection with that dacoity?"

It will appear from the nature of these two questions that the first is only a matter of opinion, whereas the second is really a matter of fact.

It is necessary to mention here that actually there was a dacoity in village Tikri sometimes in the beginning of September, 1951. It is also an admitted fact that in this connection some eight persons were arrested, and seven of them were subsequently convicted. The gun of Baijnath Singh was seized by the police in September, 1951, and after enquiry it was returned to the petitioner in December, 1951. We have got on the record Ex. G, the undertaking given by Baijnath Singh when he got back his gun, to the effect that he would not dispose of it while the Sessions case was pending.

When this pamphlet was issued, the accused in the Tikri dacoity case had been arrested and identified by witnesses, and a case was about to start against them. Ram Khelawan (D.W. 39) who was examined on behalf of the respondent, stated that the suggestions made in these questions were true to his knowledge and belief.

Baijnath Singh in his deposition denied the allegations made in these questions in the pamphlet, but he ultimately admitted that he had to deposit his gun with the police which was subsequently returned to him. On behalf of the respondent one Sitla Prasad (D.W. 6) a retired Sub-Inspector of police of Amethi was examined besides Ram Khelawan (D.W. 39). Sitla Prasad stated that he had suspected Baijnath Singh in the course of investigation in connection with this dacoity, and so he had seized his gun. Besides Sitla Prasad, some other witnesses were also examined by the respondent to prove that these accused persons had canvassed for Baijnath Singh at the time of the elections. Anyway, there is sufficient evidence to show that there was some justification for Ram Khelawan to frame the question showed what opinion Ram Khelawan had about the petitioner, and in our opinion it does not come within the purview of Section 123(5) of R.P. Act, 1951.

Question No. 2 is practically correct. It is a statement of fact, which cannot be denied altogether. We find no harm in this question.

In the third question Ram Khelawan asked if the petitioner had collected premiums from different constituents of an Insurance Company for which he was working as canvasser and agent, and did not pay them to the Company, on account of which the Company dismissed him.

The charge about the allegation of question No. 3 was given up by the petitioner; so the truth or otherwise of this question remained unchallenged. It will not be necessary for us to discuss the facts about the allegations made in this question by Ram Khelawan.

Under question No. 4 Ram Khelawan asked: "Whether Baba of Araru Bir got tired of your activities and started a case under Section 107, Cr.P.C. and you were ignominiously turned out from that place?" The respondent's case is that Baijnath Singh was working as a clerk in the cattle market of Baba Araru Das in village Korari Lachhan Shah in 1944. The respondent also tried to make out that the petitioner, with the help of one Vidya Dhar Bajpai tried to oust Baba of Araru Bir from the place, and take possession of the market and all other properties of Baba Araru Das. The petitioner denied all these allegations, and went so far as to deny that he ever lived in the Bazar of Araru Bir. The respondent contradicted the statement of Baijnath Singh by producing Baba Ram Das (D.W. 34) a successor of Baba Araru Das, who stated that the petitioner was a clerk in his cattle market and that he got rid of Baijnath Singh by filing a suit for possession under section 9 of the Specific Relief Act. We have on the record a copy of the application of Baijnath Singh (Ex. A) dated 30th November 1944 a Qabuliat (Ex. B), in which documents he gave his residence as 'Bazar Araru Bir'. There is no doubt, therefore, that the petitioner was at least living in Bazar Araru Bir for some time. Further we have also on the record the judgment of a case under section 107 (Ex. 7) which Baba Ram Saran Das had filed against Baijnath Singh and also the judgment of a cross-case which Baijnath Singh had

filed against Ram Saran Das. From the facts mentioned in these documents we come to the conclusion that Baijnath Singh was not living quietly in the Bazar Araru Bir, but was creating trouble. The allegations made in question No. 4 are substantially true especially, when we look at the judgment of the suit under section 9, Specific Relief Act. It was decreed *ex-parte*; but the fact remains that the petitioner was really ejected from the market Araru Bir by Baba Ram Saran Das.

The question No. 5 asks the petitioner—"Whether being so characterless he expects votes from them?" This is clearly an expression of opinion based on the facts referred to in the former questions especially when the correctness of the allegations suggested in question No. 3 has not been challenged.

We have thus shown that this document (Ex. 1) has expressed only some strong opinion against the petitioner, but its publication does not bring it under section 123(5). Similar observations have been made in cases reported in (1) Sen & Poddar, page 854, at pp. 855-59 (para. 3), (2) Government of India Gazette No. 106, dated 4th May 1953, page 1531 at pp. 1540 (para. 30).

Under Part II(b) of the list, objection has been taken against another pamphlet marked Ex. 2 issued in the name of Baba Ujagar Das. According to the petitioner the objectionable matter is in paragraph (3) of this pamphlet. This document is a sort of a questionnaire for the Congress High Command. It is asked in this pamphlet whether the Congress could not find any truthful and honest candidate for nomination other than a person full of complaints. The suggestion probably is that Baijnath Singh should not have been nominated by the Congress, but we find no direct charge against the individual person. The actual complaint, if any is not mentioned here. It is a vague sort of reflection, and we cannot say if the complaints are political or personal. We cannot read into this article more than what is already there. It is not a statement of fact but a matter of opinion. Therefore, no objection can be taken either against the writer of this pamphlet, or the respondent who got it published. A person who offers himself as a candidate for the election, naturally invites fair comments on his political character or views. If opinions and comments of this nature are seriously taken to be defamatory and objectionable, then nothing one way or the other can ever be said about a candidate. The whole of the document should be read, and not any particular line of it. We have considered the wordings of this pamphlet, and we are of the opinion that it in no way affected the chances of the petitioner. This view of ours finds support from the observation of the Patiala Tribunal published in the *Gazette of India, Extraordinary*, Part II, Section 3, No. 133, dated 28th May 1953, on page 1743 at page 1749 in paragraph 14; and we agree with the view expressed at the end of that paragraph that, "where there was some basis for the statements published and it is not found that they were false, though perhaps to some extent exaggerated, it becomes difficult to find that the publisher could not have believed them to be true and so to bring them within the prohibition in Section 123(5)". For the same view we may quote the case discussed in 5 O'Mally and Hardcastle's "English Election Cases" page 155 at pp. 159-62.

The third notice mentioned by the petitioner under paragraph (c) of the list, Part II, is Ex. 3. It is said to be signed by one Lautoo Singh Gautam. It is an admitted fact that the Estate of Amethi paid for the publication of these documents. But in this document there is nothing specific against the petitioner Baijnath Singh. It only makes some remarks against the Congress.

Under paragraph (d) of the list Part II the petitioner refers to the issue (Ex. 18), dated November, 1951, of a Hindi Magazine called the 'Munaswi'. The 'Munaswi' was a monthly magazine published under the auspices of Arya Samaj at Amethi, and we find that the personal secretary of the respondent, Sri Ram Kishore Tripathi, was its Editor. It was a social paper, but during the Election days it was converted into a political one. The Editor was certainly an agent of the respondent. It appears from the evidence of the Manager (D.W. 40) that the Editor of the "Munaswi" used to accompany the respondent in his election campaign and to the meetings which he attended. We further find from the evidence on the record that the respondent was the sole patron of this magazine. It has been urged on behalf of the respondent that anyone who paid Rs. 51 could become a patron, but in fact only the respondent paid that money and became the so-called patron. There is no doubt that this magazine had the full patronage of the respondent, and the trend of its political articles were surely meant to support his candidature. The respondent is liable for the activities of his agent and we have already held that the Editor was his agent for all practical purposes. The offending article appears on page 9 of this issue of the magazine. But we find from the wordings of this article that it is nothing but a fair comment on

the political life of the petitioner. The reflections made against the petitioner are obviously strong, but the correctness of the main fact mentioned in it have not been challenged by the petitioner himself, that is to say, the fact about the insurance business, suggested in question No. 3 of Ex. 1. Under the circumstances it is not possible to hold that even this paper offends in any way the law laid down under Section 123(5) of the R.P. Act, 1951.

Under this issue it becomes essential to refer to Ex. 7 once again. It is that document which is supposed to have been published by the respondent over the signature of Lal Bahadur Singh. In this document it is mentioned that Baijnath Singh is a thief and a dacoit. This is certainly a challenge against the personal character of the petitioner. We have, however, held that this document has no connection with the respondent. In view of the above findings, we cannot take any cognizance of the matter mentioned therein.

In our opinion, therefore, these pamphlets do not offend against the prohibition laid down under section 132(5) of the R.P. Act, 1951. This issue is, therefore, decided against the petitioner.

*Issue No. 3.*—This issue relates to the charges made out in paragraph (6) of the petition and list of particulars, Part III.

The allegations are that the respondent far exceeded the prescribed maximum limit of election expenses and engaged on payment more persons than the number permitted by law. The list under this paragraph (No. 6) of the petition has been divided into two parts. The first part refers to persons employed on payment exceeding the number prescribed under Rule 118 read with Schedule VI of the 1951 Rules. The second part includes the names of those persons, who were engaged on payment in connection with the election but were not shown in the return of election expenses filed by the respondent, (Ex. 22).

We shall now take up one by one, the items mentioned in this list, Part III.

*Item No. (1).*—It is said that 10 school teachers of Sri Ranvir Higher Secondary School at Amethi and about a dozen grown-up students worked for the respondent at the time of election and were not only paid but were also fed by the respondent. It will be noticed that neither in the petition itself nor in the list, the names of the school teachers or of the students were given. The respondent, therefore, made only a general denial in his written statement.

In return of election expenses filed by the respondent no expenses have been shown as payments to teachers and students of the Ranvir Vidyalaya Higher Secondary School. In this connection it is necessary to mention that the Higher Secondary School at Amethi takes its name from the deceased elder brother of the present respondent. There is not the least doubt that the respondent is highly interested in this school. Two of the lawyers of Amethi who have come to depose in favour of the respondent are the President and the Secretary of this School. It is, highly probable that some of the teachers and students helped the respondent at the time of election. This fact, however, has been totally denied by the respondent. The petitioner, at the time of arguments, filed a list of several students who according to the petitioner worked as messengers of the respondent. He has picked out these names from Ex. 22 and has compared the names with those in the U.P. Gazette of 1952 to show that these were students who passed out from the Ranvir Vidyalaya Higher Secondary School in that year. The respondent replied to this by filing another list showing that all the names did not tally with each other. Any way, it must be said that some of the students at least worked as messengers, and their expenses were shown in Ex. 22. So long the expenses are shown, no offence has been committed. If the students had worked as volunteers for the respondent, there would have been no harm done.

In this connection the respondent has relied on the statement of Sri Badri Pd. Singh, D.W. 1, the Principal of this Vidyalaya, who denied the allegations made by the petitioner that the students and teachers of this school had worked for the respondent. Besides the Principal, the respondent also examined Sri Ram Sumeran, the Jan Sangh candidate for the House of People from Amethi and neighbouring places. One of the circles included in Ram Sumeran's constituency was the same as that of the respondent. Sri Ram Sumeran in his return of election expenses (Ex. Q) has shown that he had engaged some 13 students of Ranvir Vidyalaya and one teacher to help him. He has shown the expenses incurred on these students and the teacher in his return of election expenses (Ex. Q). It is asserted on behalf of the petitioner that Sri Ram Sumeran was actually a friend of the respondent, and these expenses on the students were shown in his return to avoid the inflation of respondent's expenses. From the statement of Sri Ram Sumeran (D.W. 2) we find that though he was interested in the respondent's election, there is no reason why he should have entered into this fraud



The main witness for the petitioner on this point is Kamta Prasad Tripathi (P.W. 3), a student of this school. This young man made wild allegations that some 150 students were engaged in distributing leaflets and calling meetings for the respondent. He has far exceeded the number given in the petition. If this man had really worked for the respondent to the knowledge of the petitioner, we should have found his name in the petition itself. The next witness is Shatrughan Prasad (P.W. 4). He did not make any direct allegations regarding the students, but in the course of his cross-examination he stated that the students had distributed the pamphlets. We have already said that if any student did work as a volunteer, it would not affect the case in any way. Other witnesses for the petitioner are Har Charan Gupta (P.W. 12), Har Saran Singh (P.W. 14) and Gur Prasad Singh (P.W. 15), besides the petitioner himself. We are, however, not satisfied from the evidence of these witnesses that the students really worked for payment. There is evidence about one teacher only. Even the Principal of the College who came to depose on behalf of the respondent admitted that one of the teachers, Sri Surendra Nath Mittal who was interested in Jan Sangh, worked for Sri Ram Sumeran, the Jan Sangh candidate for the Parliament. The charge originally made in the petition is rather vague. No particulars were demanded from the petitioner, nor was any particular supplied by him. Mere statement of witnesses do not bring home this charge against the respondent. We, therefore, decide this point against the petitioner.

**Items (ii) & (iii).**—The charge is that all the Zileendars of Amethi Estate, about 20 in number, assisted by their Peons and Orderlies worked for the respondent, so also the Manager and the Asstt. Manager of the Estate. It is admitted fact that some 16 Zileendars with their Peons and Clerks and the Manager and the Asstt. Manager did work for the respondent at the time of Elections. The Manager Sri Suresh Chandra Misra (D.W. 40) also admitted these facts.

The petitioner's case is that the fact that all these employees of the Estate worked for the respondent offended against the law as laid down in Rules 117 and 118 read with Schedules IV and VI of the R.P. Rules. He further contends that as these persons worked directly for the respondent in connection with his election, the equivalent of their pay should have been included in the return of election expenses, and if so, the amount would have far exceeded the maximum limit allowed to a candidate. The respondent pleads that, first of all, these Zileendars and their clerks etc. and the Manager were the employees of the Amethi Estate, and were not the employees of the respondent; that they should be treated as volunteers and not as paid workers for the respondent, and, that their activities were only incidental to the election, and as such it was not necessary to include the equivalent of their pay in the return of election expenses.

It is further contended on behalf of the respondent that these people did not work full time for the respondent, and therefore, the amount of their pay cannot be calculated, and as no extra payment was made to any of these estate servants for working in the election, there has been no breach of law in not showing the equivalent of their pay in Ex. 22. It is necessary to mention at this stage that the petitioner tried to summon the accounts of the Amethi Estate to show that, there was no collection during the period of Election, and that the Estate work had actually been suspended as all the employees of the Estate were working in the Election. The Amethi Estate did not file the accounts. The Manager when in the witness-box was also questioned about the amount of collections made during that period, but he could not give any satisfactory reply about it. We find further from the evidence on the record that the Manager of the Estate and the Personal Secretary of the respondent were moving about with him from place to place, and attended almost all the meetings where the respondent went. There is no doubt that the Manager and the Asstt. Manager were fully employed in this election and were interested therein. It is also admitted that the Zileendars, their peons and clerks helped in the election by calling meetings, distributing leaflets and coming to Amethi every day for making reports, etc. We, therefore, think that their work was in connection with the Election, and not only "incidental to the election."

Issue No. 3 consists of three charges brought by the petitioner against the respondent, namely (1) the respondent employed more persons in connection with his election than permitted by law, (2) the respondent spent more money over his election than permitted by law, and (3) the respondent had incurred certain expenses but he has not shown them in his return of election expenses, (Ex. 22). We may consider the law involved in this issue under three heads, viz. (1) the law regarding the number and description of persons who may be employed for payment, (2) the law regarding the maximum expenses permissible, and (3) the law regarding the return of election expenses to be filed by each candidate who had contested.

The law regarding these matters is contained in certain sections of the R.P. Act, 1951 and in the rules made thereunder including the schedules and forms.

The mandatory direction of the law regarding the first head is to be found in Section 77 and Rule 118 read with Schedule VI; its breach is defined in Section 123(7); and its penalty and consequences are shown in sub-sections (2) and (3) of Section 100 and Section 140.

The mandatory direction as regards the second head is to be found in Section 77 and Rule 117 read with Schedule V; its breach is defined in Section 123(7); and its penalty and consequences are shown in Section 100(2), (3) and Section 140.

The mandatory directions regarding the third head are to be found in Section 44 and 76 and in Rule 112 read with Schedule IV and form XXVI, included in Schedule I; their breach is defined in sub-section (4) of Section 124; and its penalty and consequences are given in Section 100(2) and 140. We will consider these heads one by one, and now take up the first head.

Section 77 lays down that "the maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with elections shall be such as may be prescribed"; and Rule 118 which prescribes them says: "No person other than, or in addition to, those specified in Schedule VI shall be employed for payment by a candidate or his election agent in connection with his election." Schedule VI gives the list of persons, who may be employed, as follows: "(1) one election agent, (2) one counting agent, and (3) one clerk and one messenger."

We have found above that the respondent employed almost fully his Manager, the Asstt. Manager the 16 Zileedars and their clerks and peons in connection with his election. The petitioner contends that by so employing, the respondent had employed more persons than given in Schedule VI, and so has violated the directions in Section 77. The respondent, on the other hand, contends that he has not violated any rule or law. He has put forward several arguments for his contention: i.e. (1) they were his father's servants and not his, (2) they have not been paid any extra sum by the respondent for doing the election work as they got their normal salary which they used to get before the election and which they would have got even if there was no election, (3) as his father had lent the services of his servants, the servants must be deemed to be volunteers and not employed for payment, for payment means actual payment and not national payment.

On the first branch of this argument, his contention is that the Amethi Estate is an impartible Estate of which his father is the sole owner and the respondent is at the most only his heir-apparent. In this connection we may mention that it has been admitted by the respondent's Manager (D.W. 40) in his deposition that the respondent's father is 85 years old, and the management of the Estate is looked after by the respondent. Hence, in our opinion, the respondent is virtually the owner of the Estate, of which the said servants are the employees.

The second argument of Sri Gopinath Kunzru, the counsel for the respondent, is that the respondent had not 'employed' any extra servants; and he lays emphasis on the use of the word 'employment' in sub-section (7) of Section 123 and in Rule 118 and Schedule VI. He contends that the said section and the rule prohibit the appointment of servants for the specific purpose of election, and does not prohibit the employment of old servant in connection with the election, and has relied upon the decision of Mr. Justice Phillimore in the 'Hartlepool's case', reported 6 O'Mally and Hardcastle page 1 at p. 6. There, Sir Christopher Furness, the candidate had a private secretary, Mr. Butler, whom he had employed in connection with his election, but had not shown his salary in the return of his election expenses, though if shown, the maximum would have been exceeded, as the total of Sir Christopher's expenses showed in the return was within a few shillings of the maximum. It was observed that his salary need not be shown because the Secretary was getting the pay of his usual office and nothing extra was paid to him on this occasion on account of doing the election work, though he had been paid an extra sum in a previous election in 1900. The relevant portion of the observation of Mr. Justice Phillimore on this point is found on page 5 as follows:

"If it could be said that Butler (Secretary) was so employed by Sir Christopher Furness that his employment was in substance political or partly political that he was retained partly as a private secretary,

but also for all political work that Sir Christopher might have, as registration agent, during the years when there was no election, as election agent during the years when there was an election, it would be necessary to return a proportionate part of his salary as being expenses of the election, because that would be the hire of his services as election agent but the facts that Butler was given an extra payment in 1900 and that Sir Christopher was prepared and even desirous but for personal grounds, to appoint somebody else in the place of Butler as election agent for this election, so that we cannot consider it as part of the duties of Butler in respect of his standing employment to the election agent when called upon."

It appears to us that in the first part of his observations, Mr. Justice Phillimore gave the general law and in the second part he applied it to the facts of the case before him and held that it was not covered by the general law. If so, this case will not help the respondent (Kunwar Rananjaya Singh), but we think, we are on surer ground in holding that in general an old employee should be deemed to have been employed in connection with the election if he had continuously done the election work for a period and not off and on; because in the same judgment Mr. Justice Phillimore while dealing with the case of the clerks, observed as follows on page 6: "Taking the other point of view that these were Sir Christopher's old employees, I am certainly inclined to think that if a business-man takes his business clerks and employs them for election work, which, if he had not business clerks, would be normally done by paid clerks, he ought to return their salaries as part of his expenses; otherwise a rich man, and above all, a large employer, has a very considerable advantage over other candidate. The maximum limit of expenditure being equal for both, he can attribute to other matters than clerks, a very much higher sum than his rival would be able to attribute." These observations have been followed and relied upon by some Election Tribunals in India and Sri R. N. Basu, counsel for the petitioner, has cited two, namely, the Amritsar City case (1924) Khanna's Indian Election Cases, Vol. II, page 16, at p. 25, and the Farrukhabad District case (1928), Khanna's Indian Election Cases, Vol. III page 84 at p. 102. They represent a very reasonable view of law and we entirely agree with the observations of Mr. Justice Phillimore last quoted.

The next contention of Sri Gopi Nath Kunzru, is that when the respondent's father lent the services of his servants they must be taken to be volunteers, especially because the respondent did not actually pay any sum of money to them. He contends that at the most it can be said against him that the money value of those services should have been shown in his return of election expenses and he has relied for this contention on several cases which we shall presently consider. Suffice it to say here, that we have already held that the said servants were virtually the respondent's own servants. But as the point has been argued at length we should consider the rulings cited by him. (1) The Vellore case, reported in the *Gazette of India, Extraordinary*, Part II, Section 3, No. 71, dated 26th March 1953, page 913 at p. 925. There, a counsel appeared for the respondent at the time of the scrutiny of nominations, but he was not paid anything. It was contended for the petitioner that although the counsel had appeared for personal obligation on ground of friendship, his services should have been evaluated and shown in the return. The Tribunal did not accept this contention, saying that there was no authority for it. This case only decided that the money equivalent of a volunteer need not be returned. The case of one's own paid servants, we, think, stands on a quite different footing, and is covered by the express words of the Section and the rule referred to above. (2) The other case relied upon by Sri Kunzru is a judgment of an Election Tribunal in the State of Bombay (deciding the Election Petition No. 68 of 1952) published in the *Gazette of India, Extraordinary*, Part II, Section 3, No. 189, dated 20th July 1953. The paragraph relied upon by Sri Kunzru is paragraph 27 where the Tribunal considered whether the use value of the cars borrowed from a friend should be shown in the return of election expenses. The Tribunal referred to Pt. Nanak Chand's book on the 'Law of Election' page 195 and to the judgment of Bellary Tribunal published on page 827 of the *Gazette of India, Extraordinary*, dated 20th March 1953, and came to the conclusion that, the actual expenditure on petrol used in borrowed cars should be shown but not the use value of the borrowed cars. In the Bellary case it was contended that the pay of the drivers and some amount of reasonable hire of the cars lent should be shown in the return, but the Tribunal over-ruled it, saying: "Unless it is proved that the candidate has incurred the expenditure and that he did not show, it appears to us the return cannot be considered to be false. Even if for any reason it should be held that the probable drivers' charges or hire should be included, unless a corrupt motive is shown, it is difficult to consider that the return is false." (paragraph 27).

The next paragraph, No. 28 gives the decision of the Tribunal as follows: "No corrupt motive is alleged or made out and this is not a case in which a candidate obtains a fleet of cars from friends so that the maximum expenses may not be ostensibly exceeded." Thus, in the Bellary Tribunal case, the cars had been lent by a friend and their use value had not been shown. Under these circumstances, it was held that it need not be shown because the respondent himself had not incurred any expenses. To the same effect is a press note issued by the Election Commission, published in the 'Leader' (an Allahabad daily), dated the 1st March 1953. But in the case before us, the same cannot be said with respect to the employment of the Estate servants by the respondent who is the virtual owner of the Estate. In the Bellary case as well as in the Election Petition No. 68 of 1952, in which it was relied on, the charge was not under Section 123(7)—a major corrupt practice—but under section 124(4)—a minor corrupt practice, and so the tribunals laid emphasis on the use of the word "false" in Section 124(4) which implies a corrupt motive and did not hold the return to be false, for even if the value of the use of the cars had been taken into account, the respondent's expenses would not have exceeded the maximum limit.

Sri Kunzru's argument is that if the money value of the use of a friend's car need not be included in the return, the money value of the services of the servants of the respondent's father should not be included either. We are unable to agree with him. The case of the use of a borrowed car stands on a different footing from the case of the employment of one's own servants. In this case, if the salary of these servants is included, then the total expenses of the respondent would exceed Rs. 8,000 the maximum limit (as we shall presently see) and this circumstances will distinguish this case from the two cases abovementioned, looked at as a minor corrupt practice under section 124(4).

Sri Kunzru, for the respondent, has also relied on a judgment, of the Ludhiana Tribunal, in the Election Petition No. 123 of 1952, published in the *Gazette of India, Extraordinary*, No. 184, dated 16th July 1953, page 2367 at p. 2376 and another judgment of the same Election Tribunal, published in the *Gazette of India*, No. 195, dated 24th July 1953, on p. 2490. In the former, the cost of printing of a poster had not been shown in the return of election expenses, and so it was contended that the return was false within the meaning of section 124(4). The Tribunal found that the omission was accidental and its costs if added to the expenses returned would not have increased them to over Rs. 8,000. So, it held the return was not false within the meaning of Section 124(4). In the latter, the expenses in connection with tea supplied to workers had not been shown, but the Tribunal found that the expenses had been incurred before the day of the poll, and so the expenses were for the workers and not for the voters. They further say: "Even if this expense had been shown, that would not have swelled the total expenses beyond the limit prescribed, and we cannot see why the respondent should have excluded this expense from the return. This being a corrupt practice, was must be satisfied that there was a corrupt motive in keeping back the expense for which there is no evidence."

Thus, we see that in all these cases the contention was regarding the non-inclusion of certain expenses and the charge was under Section 124(4), which says—"the making of any return of election expenses which is false in any material particular or the making of a declaration verifying any such return", is a minor corrupt practice. But here, at present we are dealing with a charge of major corrupt practice due to the breach of the direction given in Section 77, which is a major corrupt practice within sub-section (7) of Section 123, namely, incurring of expenditure in excess of the maximum prescribed. This sub-section does not use the word "false", nor any similar word or language making the intention of the candidate an essential ingredient of the charge. Hence, the mere incurring of the excessive expenditure is a corrupt practice though the candidate may be innocent of the law and may have no corrupt motive. In our opinion therefore, the rulings cited by the learned counsel for the respondent do not help him.

We are, therefore, of opinion, that the said employees i.e., the Manager, the Asstt. Manager, the 16 Zileddars, and their clerks and peons, were employed by the respondent in connection with his election; and they are persons other than and in addition to those mentioned in Schedule VI, mentioned in Rule 118 and the respondent, is, therefore, guilty of a corrupt practice as defined in Section 123(7), and is liable to be dealt with under sub-section (2)(b) of Section 100 and Section 140 of the R.P. Act, 1951.

As to the second head, the maximum limit—The mandatory direction regarding the maximum limit of expense is in Section 77 which has already been quoted and the relevant rule is Rule 117, which says: "no expense shall be incurred or

authorised by a candidate or his election agent on account of in respect of the conduct and management of an election in any one constituency in a State in excess of the maximum amount specified in respect of that constituency in Schedule V." The State of Uttar Pradesh finds place among the Part 'A' States, and the maximum prescribed in Schedule V for each of such States, for a single member Assembly constituency, is Rs. 8,000. Here, we may note a little difference between the Section and the Rules. Sub-section (7) of Section 123 uses the words "a candidate or his agent", but Rules 117 and 118 use the words "a candidate or his election agent". But this difference will not be of any consequence in the present case as whatever was done in this connection was done either by the respondent himself or by his Manager, Sri Suresh Chandra Misra (D.W. 40), who had admittedly conducted the election on the respondent's behalf throughout. We have already held that the Estate employees in question must be deemed to be virtually the respondent's employees, and on this basis we proceed to calculate the amount of salaries of the admitted employees, for the period they worked in connection with the election. The Manager gets Rs. 500 per mensem, each Zildar Rs. 20 per mensem, each Supervisor Rs. 40 per mensem, each clerk Rs. 10 and each of the 64 peons Rs. 5 per mensem. Hence the monthly expenses over these employees come as under:—

1. Manager	..	Rs. 500
2. Asstt. Manager	..	Rs. 150
3. Supervisors (3x40)	..	Rs. 120
4. Zildars (16x20)	..	Rs. 320
5. Clerks (3x10)	..	Rs. 30
6. Peons (64x5)	..	Rs. 320
Total		Rs. 1,440

The services of these persons were requisitioned in connection with the election from 12th of November 1951 (the date when the first head of receipt and expenditure was entered in the return) to 5th of February 1952 (the last date of counting of votes), that is, for a period of about 2 2/3 months. Their pay for this period comes to Rs. 3,840. Hence in our opinion, this sum should have been shown both on the credit side and also on the debit side in the return of election expenses (Ex. 22) by the respondent. Adding this figure to the total of expenses shown in the return (i.e. Rs. 6,592-15-3) we find that the total of the respondent's expenses comes to Rs. 10,432-15-3. Even if we add only half the amount the total comes to Rs. 8,512-15-3.

Here we should mention that the law regarding the above matters was the same before 1951 as now, except that there was then no maximum limit of expenses prescribed. Filing of a false return was not a corrupt practice under the rules prevailing upto 1951, as it was not included among the corrupt practices enumerated in Schedule V attached to those Rules; it was only an illegal practice. In England, falsity of the return of election expenses is by itself a statutory corrupt practice for a long time. (*vide* Hugh Fraser's Law of Parliamentary Elections and Election Petitions, page 138); but in India, it was only a non-compliance with the Rules and the mandatory provisions of law. But it entailed disqualification and the consequent vacation of the seat. It was an illegality as distinguished from a corrupt practice. In England, it is both a corrupt practice and illegality. Before 1951, the Indian Legislature adopted only a part of the English Law and made the falsity of the return of election expenses an illegality, and did not adopt the other part of it that made it a corrupt practice also. It remained an illegality in India till the maximum was fixed by Section 77 of the R.P. Act, 1951, and it was declared to be a minor corrupt practice by section 124(4).

Now, that the Indian Legislature has brought the law in India in line with the English Law, we think, that the observations of Mr. Justice Phillimore (while dealing with the case of clerks) last cited, are applicable to India, and the decisions of the Amritsar City and the Farrukhabad District cases, though decided under the previous law, are still good law under the 1951 Act, and the Rules.

In the Amritsar case, not only the cost of the stationery was not shown in the return of election expenses but the pay of the election agent was also not shown, and, therefore, the Commissioners observed (on page 23 of Khanna) "As regards stationery too, a fair amount must have been required. We think the respondent ought to have shown in his return all expenses in connection with election, big or small, and the explanation that certain articles were taken from the respondent's own shop or house, cannot be considered satisfactory. We also consider

that if any men, in the service of the respondent, were taken on election work, their wages for the period should have been shown in the return (cf. 6 O.M. and H. p. 5)."

In the Farrukhabad case, the respondent had employed in connection with his election, his Manager, and his Qiledar, among other servants, and it was held by the Commissioners that their pay should have been shown in the return of election expenses. This is a correct view of the present law also and, we agree with these two decisions.

We, therefore hold that the respondent has incurred on account of and in respect of the conduct and management of his election, expenses in excess of the maximum amount specified in Schedule V, and so is guilty of a major corrupt practice as defined in Section 123(7), and is liable to be dealt with under Section 100(2) (b) and Section 140 of the R.P. Act, 1951.

As to the third head, regarding the return of expenses to be filed:—

Section 76(1) makes it compulsory for every candidate "to lodge with the Returning Officer in respect of his election a return of the election expenses signed by him and his election agent." Sub-section (2) lays down that "Every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declaration in the prescribed form, by the candidate and his election agent, made on oath or solemn affirmation before a magistrate". The relevant Rule 112(2) directs that "Every such return shall be in the form 26 and shall contain the particulars specified in paragraphs No. 1 and 2 of Schedule IV and shall be accompanied by the declarations referred to in sub-section (2) of Section 76....." Paragraph (1) of Form 26 says: "Receipts—including all moneys, securities and equivalents of money received from any person (including the candidate himself), clerk, society, or an association in respect of any expenses, whether paid or remaining unpaid incurred on account of, or in connection with or incidental to the election, the name of each such person etc. and the amount received shall be shown separately—". Paragraph No. 2 runs thus: "Expenses.—including all payments made by the candidate or by his election agent or any person on behalf of or in the interests of the candidate, in respect of any expenses incurred on account of, or in connection with or incidental to the election, and paid or unpaid claims in respect of any such expenses of which the candidate or his election agent is aware....."

The contention of the petitioner is that the salaries of the employees of the Estate who were employed by the respondent in connection with or on account of, or even incidental to the election should have been shown. We have found that the Manager, the Asstt. Manager, the 16 Zileendars and their clerks and peons, were used by the respondent in connection with his election and that their salary for the period they were so employed came to Rs. 3,840. The petitioner contends that the respondent should also have shown in his return the salaries of all his drivers and clerks even if their employment was "incidental to the election." But under the circumstances it is not necessary to give a finding on this point, because the finding regarding the other servants is enough for his purpose. According to that finding the respondent should have shown the pay of the employees above enumerated for the period of 2 2/3 months and also should have shown their names and particulars. He should also have shown them and their salaries under paragraph (1) of Form 26 among the receipts, but he has shown them neither on the credit side nor on the debit side. The return, therefore, can not be said to be a true return. In the case cited by Sri Gopinath Kunzru for the respondent, and discussed above, it was observed that even if, the expenses which should have been shown, but were not shown in the return were added, then too the maximum would not have been reached and therefore, there was no corrupt motive and the return could not be said to be false on account of the omission, but the same cannot be said about the present respondent's return. The expense actually shown in it is Rs. 6,592-15-3 and if even half the salaries were included, the expenses would have exceeded the maximum limit.

We are, therefore, of opinion that the respondent made a return (Ex. 22) which is false in material particulars, and therefore, he is guilty of a minor corrupt practice as defined in Section 124(4) of the R.P. Act, and is liable to be dealt with under section 140 of the said Act.

*Item No. (iv).*—It is said that 20 or 25 paid workers also worked throughout the election period for the respondent No. 1 and that their pay has not been shown in the return of election expenses. This charge is absolutely vague. No names were given in the list filed along with the petition. The respondent, therefore, made a general denial of this allegation.

There is only one witness, namely Har Saran Singh (P.W. 14), who tried to prove that he had been appointed by the respondent at Rs. 2 a day along with 20 or 25 other persons, for working as Peon at the time of election. According to this witness, not only he but Lal Bahadur Singh of Semra, Ram Lakhon Singh of Korari, Hir Shah and Sarjoo Singh of Chaubepur were also paid workers. We have discussed the statement of this witness on several occasions, and we found that he was a most unreliable person. There is no clear evidence that the respondent actually engaged men barring his own Zileedars and permanent peons, to work at the time of election. We, therefore, decide this item against the petitioner.

*Item No. (v).*—It was urged on behalf of the petitioner that six motor cars were used by the respondent for election purposes and that drivers and cleaners were paid by him and that this amount was not shown in the return of election expenses. We find from the statement of the Manager (D.W. 40) that only two cars were used by the respondent for election purposes. Large amount of petrol has been consumed by these two cars. We can safely accept the respondent's version that all this amount of petrol was used by the two cars, because they were being run on kachcha roads. There is no positive evidence to prove that six cars were actually used by the respondent, and that six drivers were paid by him. The salaries of the two drivers have been shown in the return of election expenses. We think that this is the correct state of affairs, and hold that this item has not been proved by the petitioner.

Under the list of particulars, Part III, the petitioner has given a second head of concealed expenses. Under this head several items have been separately shown.

*Item No. (a).*—This item is in respect of one Panna Singh Bhajnik. It is said that this Bhajnik was engaged for propaganda work on payment of Rs. 5 a day, and that he worked for the respondent for about a month, and so the respondent should have shown his pay and travelling allowances in his return.

Har Charan Gupta, the rival candidate, (P.W. 12), Baijnath Singh, the petitioner (P.W. 13), and Har Saran Singh (P.W. 14) have deposed that at the time of the meetings called by the respondent Panna Singh used to sing Bhajans and thus invited men to those meetings. Their story is that Panna Singh worked for the respondent and was paid actually Rs. 5 a day in the presence of Har Saran Singh, the omnibus witness.

The respondent has examined several witnesses against these allegations. The main witnesses on the point are Sri Ram Sumeran (D.W. 2) and Panna Singh himself (D.W. 5). Ram Sumeran was the Jan Sangh candidate for the House of People from this constituency. It appears that Ram Sumeran and Kunwar Rananjaya Singh the respondent, were working hand in hand. Ram Sumeran's version is that it was he, who had appointed Panna Singh Bhajnik for his work in this Constituency, and that he paid him at the rate of Rs. 15 a day. It is also alleged by Ram Sumeran that one Mahashaya Kedarnath an Arya Samaj leader, had sent Panna Singh to do the propaganda work for him in this locality. Ram Sumeran's return of election expenses (Ex. Q) is on the record. We find that Ram Sumeran paid Rs. 42-12-0 as travelling allowances, Rs. 26-11-0 as food and lodging charges, and Rs. 194 as pay to Panna Singh Bhajnik. Panna Singh himself supports the allegations made by Ram Sumeran. There are, of course, other witnesses including the Manager, who denied charges made under this item against the respondent. We have considered the evidence of the parties in this connection, and have heard the arguments put forward by Sri R. N. Basu, for the petitioner. The petitioner's suggestion is that the Bhajnik really worked for the respondent, but his expenses were shown in the return of Jan Sangh candidate to avoid inflation of expenses shown in the respondent's return.

It is a fact that Panna Singh Bhajnik worked in this locality, namely, Amethi Central, and at one village outside the Constituency. The Jan Sangh candidate Ram Sumeran had five of these Assembly constituencies included in his Parliamentary constituency. This Bhajnik mainly worked in Amethi and, as we have already said, in one village outside this Constituency. There may, therefore, be some suspicion that this Bhajnik had actually been appointed by the respondent to work for him, but there is no positive proof on which a definite finding can be given in favour of the petitioner. We, therefore, decide this item also against him.

*Item No. (b).*—It is said under this head that the respondent got 20 cycles repaired by one Mohammad Hafiz of Amethi to whom Rs. 275 were paid. This fact has been denied by the respondent.

On this point the petitioner examined, besides himself, Kamta Pd., who stated that he had heard about this payment and Har Saran Singh (P.W. 14) who stated that Rs. 275 were paid to Mohammad Hafiz in his presence. This last witness is an omni present one. He claims to have been present on all occasions.

The respondent has relied on Ex. Q, the return of election expenses filed by Ram Sumeran. In this return he has shown Rs. 457-6-0 paid for cycle repairs to one Mustafa, who happens to be a brother of Mohammad Hafiz. The respondent has also examined 4 or 5 witnesses on this point. They all say that the Zileendars and their peons had their own cycles and no cycle was hired from anybody else. Ram Sumeran appears to have paid for these cycles that he took on hire and issued to students of Ranvir Vidyalaya to work for him. We have not accepted the petitioner's story that these students of Ranvir Vidyalaya were engaged by the respondent. We, therefore, do not find that bicycles were issued by the respondent, to his workers. It was unnecessary for the respondent to show any expense for cycle repairs in his return. This item too is decided against the petitioner.

*Item No. (c).*—This item relates to the expenses incurred at the time of tea and dinner to which about 1,500 persons were invited by the respondent No. 1. We have held above that no tea or dinner was given by the respondent or his Manager in connection with this Election. This item has, therefore, not been proved by the petitioner.

*Item No. (d).*—This item is divided into several sub-heads.

Sub-head No. (i): relates to the cost of printing of notice over the signature of Lal Bahadur Singh (Ex. 7). It is a fact that the expenses for the printing of this notice has not been shown in the respondent's return. We have also held that the respondent had nothing to do with this notice (Ex. 7). It was, therefore, not possible for him to show its expenses at all.

Sub-heads (ii), (iii), (iv), (v) & (vii): were not pressed by the petitioner. The charges under these sub-heads stand not proved.

Sub-head No. (vi): Under this sub-head it is alleged that a certified copy of the entry relating to the respondent No. 1's name in the electoral roll was filed with the nomination paper, but was not shown in the return of election expenses. The item is very small. Though a certified copy like this was filed with the nomination paper of the respondent, actually no such copy was necessary, because Kunwar Rananjaya Singh, the respondent No. 1 was himself a voter in this Constituency. Anyway, we find from the respondent's return of election expenses (Ex. 22) that one Jalpa Prasad, Petitioner-writer, was paid Rs. 2-9-0. His voucher Ex. BB shows that out of this money Rs. 1-3-0 was spent by him on an application, and Rs. 1-6-0 was taken by Jalpa Prasad for his writing charges. It appears that this Rs. 1-3-0 was spent to obtain the certified copy of the entry relating to the name of the respondent No. 1 on the electoral roll. This charge, has therefore, no force.

We decide the entire item No. (d) against the petitioner.

Under this issue various points have been discussed, but the item referring to the pay of Manager, the Assistant Manager, the Zileendars and others, has been decided against the respondent. The effect of this decision will be discussed at the time of deciding the final issue. The rest of the points raised under this issue have already been decided against the petitioner.

*Issues Nos. 4, 5 and 6.*—These issues have not been pressed. We, therefore, decide them against the petitioner.

*Issue No. 7.*—Under this issue we have to decide whether the respondent will be responsible for corrupt practices committed by him or on his behalf. In this connection it is necessary to refer to paragraphs (16) and (17) of the written statement, wherein the respondent has said that he gave special instructions to his agents and servants not to commit any corrupt practice and that he adopted all reasonable means for preventing the commission of corrupt or illegal practices.

No special evidence on this point has been adduced on behalf of the petitioner. The respondent's Manager (D.W. 40) stated in the course of his deposition that, he had directed all his workers not to commit any kind of illegality. Barring these statements of the Manager, there is no oral evidence one way or the other. We have, however, decided above two items of corrupt practice against the respondent for which he must be held responsible. The other points have been decided on facts against the petitioner. Those points naturally will not affect the respondent's position in any way. The said two items



of corrupt practices were committed by the respondent or his Manager and not by any other agent. Hence, this evidence does not absolve the respondent from his responsibility.

Before deciding the final issue (No. 8), we must take into consideration the issues framed on the application of recrimination filed by the respondent.

The recrimination was filed by the respondent a little before filing the written statement. Subsequently the petitioner filed a reply to this recrimination, and seven issues were framed. We shall now take up each issue separately, and see how far the charge made out in this recrimination have been brought home to the petitioner.

**Issue No. 9.**—This issue was framed on the allegations made in paragraph (9) and Schedule 'A' of the recriminatory petition. It relates to some undue influence exercised by the petitioner (who is a member of the District Board) on some District Board teachers and in some meetings held by him at Kalkan and Jungle Tikri. The respondent, however, did not press this issue. We, therefore, decide it against the respondent.

**Issue No. 10.**—This issue is based on paragraph (6) of the petition of recrimination and Schedule 'B' of the list attached to it. The charge is that the petitioner Sri Baijnath Singh obtained assistance for the furtherance of his prospects of election from persons serving under the Government of Uttar Pradesh. Under Schedule 'B' the respondent gave 19 names of Panches, Sarpanches and Panches of Panchaiti Adalat, and his case is that these are government servants who actually helped the petitioner by canvassing for him and acting as his polling agent against the provisions of Section 123(8) of the R.P. Act, 1951.

Out of these 19 names the respondent gave up the cases of persons named in items Nos. 1, 2, 4, 9, 11, 13 and 19. He has pressed that the remaining 12 persons did work actually for the petitioner. In this connection the respondent has relied upon the entries of the register of Panches (Ex. ZZ) filed in this case, and also on the return of election expenses of the petitioner (Ex. N) and the cash book relating to the election expenses (Ex. O) of the petitioner.

We shall now take up each and every case separately, and see if in fact the persons named were Panches, and whether they actually worked for the petitioner.

The first name is that of Shripal Singh, item No. 3. It is admitted by the petitioner in his deposition that Shripal Singh was his polling agent. He probably did some other work also for the petitioner during election.

The next man in this connection is Suresh Narain Pande, also a Panch of the Panchaiti Adalat. We find his name in Ex. ZZ and so we come to the conclusion that he is really a Panch of the Panchaiti Adalat. Further we find him mentioned in the return of election expenses and the cash book of the petitioner (Exs. N & O). We also find a certified copy of the polling agent form (Ex. K) of the petitioner showing that this Panch worked as a polling agent for Baijnath Singh. It is hardly necessary to mention the evidence of witnesses in this connection. Two of the defence witnesses, namely D.W. 23 and D.W. 35 also deposed that they had seen Suresh Narain Pande working for the petitioner. There is no doubt that this Panch helped the petitioner at the time of the Election.

The next case is that of Sarabhjit Singh (Item No. 6). There is no documentary evidence to prove that this man worked for the petitioner.

Rajeshwar Singh in item No. 7 is a Panch of the Panchaiti Adalat. His name appears in the register of Panches (Ex. ZZ) and also in Exs. N and O. He was a polling agent of the petitioner (*vide* Ex. L), and Baijnath Singh admitted that this man did work for him.

The same is the case of Bindeshwar Singh mentioned in item No. 3. His name also appears in all the documents relied upon by the respondent.

Similarly, we find Ramdeo Singh in item No. 10 a Panch of the Panchaiti Adalat also worked for the petitioner. His name appears in all the three documents relied upon by the respondent.

Under item No. 12 the respondent has mentioned the name of Ram Narain Misra, another Panch of the Panchaiti Adalat. His name appears only in Ex. N, and Baijnath Singh, we find, admitted that this man worked for him.

There is no document to prove that Ram Pratap Singh, mentioned in item No. 14 and Jagdish Singh, in item No. 15 were Panches working for the petitioner. A few witnesses for the respondent attempted to bring out that these two persons did work for the petitioner Baijnath Singh, but the latter denied it altogether. The evidence against these persons is rather vague. So we do not take their cases into consideration.

In item No. 16 we find the name of Jagat Bali Singh also a Panch of the Panchaiti Adalat. His name appears in all the three documents mentioned above. He is no doubt a Panch, and surely worked for the petitioner.

The last two names are of Gaya Singh given in item No. 17 and Durga Singh, given in item No. 18. There are no documents to prove that they worked for the petitioner. We, therefore, do not take their names into consideration either.

From the above observations it will be seen that only Shripal Singh, Suresh Narain Pande, Rameshwar Singh, Bindeshwar Singh, Ramdeo Singh, Ram Narain Misra and Jagat Bali Singh, Panches and Sarpanches, worked for the petitioner. The respondent has relied on the observations made in the 'Gorakhpur case' reported in the *Gazette of India*, Part II, Section 3, No. 120, dated 16th of May 1953, page 1585, at p. 1593, to show that these Panches are persons serving the State. It is not necessary to discuss this point in great detail over here. We decided this point in the Ghazipur case, reported in the *Gazette of India*, Part II, Section 3, No. 134, dated 29th May 1953, page 1763, at p. 1771-72, and held therein that Panches and Sarpanches did not come under the purview of the "persons serving under the Government", within the meaning of Section 123(8). We have considered the matter again and we do not see that we should come to a different conclusion now.

This issue is, therefore, decided against the respondent.

*Issues Nos. 11 and 12.*—These two issues were not pressed by the respondent. We, therefore, decide them against him.

*Issues Nos. 13 and 14.*—These two issues are based on the charges made out in paragraph (9) of the petition of recrimination and Schedule 'E' filed along with it. Paragraph (9) mentions that the return of election expenses, as filed by the petitioner, is entirely false, and that the petitioner made a false declaration verifying the return. The particulars of this charge are given in Schedule 'E'. We shall now take up each and every item of the charges as given in Schedule 'E' and see how far they have been proved by the respondent.

*Item No. (i).*—It relates to the salary of the driver Raghunath Prasad, who drove the car used by the petitioner. Adhir Dubey (P.W. 11) was produced on behalf of the petitioner to prove that the latter paid nothing for the use of a car supplied to Sultanpur District Congress Parliamentary Board at Lucknow. This witness Adhir Dubey, is the Store Keeper of the Congress Parliamentary Board at Lucknow. He gave the full description about the method adopted by the Parliamentary Board at the time of the last Elections. It appears from the statement of this witness that, the Congress purchased several cars for use in different districts, and out of these only one car was sent to the Sultanpur District Congress Committee for working for all the Congress candidates, who were contesting the Assembly and the Parliamentary seats. He also mentioned that Raghunath Prasad, Driver who come to Sultanpur with a car, was paid by the Congress Parliamentary Board at the rate of Rs. 85 p.m. Sri Baijnath Singh evidently paid nothing towards the salary of this driver. In fact he did not spend any money over the use of the car, which not only worked for him but also for four other Congress candidates in Sultanpur district and Dr. Keskar who stood up for the Parliamentary seat from this locality.

It is, therefore, not possible to calculate the proportionate amount which should be charged against the petitioner. It may be said that a driver's work is only incidental to the election; but it appears to us that this omission should not have been made. A part of the driver's salary should have been shown in the return of election expenses filed by the petitioner as money equivalent, but it will be seen that in no case, the amount, if included, would have exceeded the maximum amount permitted by the law. So we may overlook this small amount, the omission of which under the law discussed above cannot be called false.

*Item No. (ii).*—The respondent, in this item, alleges that the petitioner should have shown the rent he paid for the house occupied by him at Amethi at the time of election. There is no evidence on behalf of the respondent to prove that the petitioner actually paid any rent. Petitioner, Baijnath Singh.

(P.W. 13) denies in his deposition that he ever paid any rent in Amethi. His case is that he occupied a friend's house only. As the evidence on the record does not disclose any payment of rent, we decide this item against the respondent.

*Item No. (vii).*—Under this item the respondent has tried to make out that the petitioner gave a cycle to one of his workers named Har Baksh Singh, and that he did not show the cost of the cycle in his return of election expenses. The respondent examined Badri Prasad Shukul (D.W. 19), Durga Din (D.W. 23) and Sripal Singh (D.W. 35) who in their statements mentioned that the petitioner had supplied a cycle to his worker Har Baksh Singh. We have considered the evidence on this point adduced on behalf of the respondent. We find this evidence unsatisfactory. We cannot rely upon such statements, and though there is no particular oral evidence on behalf of the petitioner on this point, we decide this item of these issues against the respondent.

*Items (iv), (v) & (vi).*—These are not pressed; so they are decided against the respondent.

*Item No. (vii).*—It refers to the charges for loud speaker used by the petitioner during the election campaign. The only witness on this point is Adhir Dubey (P.W. 11), who mentions that two loudspeakers were supplied to the District Congress Committee, Sultanpur. The case of the loudspeakers is similar to the case of the car driver's salary mentioned above. We do not find that the petitioner's return is false for this omission.

*Items (viii) and (ix).*—These are not pressed by the respondent, and therefore, they are decided against him.

These two issues Nos. 13 and 14 are, therefore, decided against the respondent.

*Issue No. 15.*—This issue relates to the return of election expenses (Ex. N) filed by the petitioner. The cash book of the petitioner was summoned by the respondent. It is Ex. O. No totals are given in this cash book (Ex. O), but by totalling the different items in this cash book, we find that the petitioner's expenses should have come only to Rs. 2,997. We, however, find from the election return that the petitioner spent Rs. 3,055-15-0.

It is urged on behalf of the respondent that, election return is palpably false because it does not tally with the cash book kept by the petitioner under the law. The respondent has also relied upon the return of election, expenses filed by Dr. Keskar, the Parliamentary candidate from Amethi. It is Ex. P. It appears from this return that Rs. 125 were paid for publication charges of notices by each Congress candidate of Sultanpur. There is no mention of this Rs. 125 in the election expenses filed by the petitioner. It is, therefore, urged that we should accept the statement in Dr. Keskar's return of election expenses to be correct, and hold that the petitioner purposely omitted this amount from the return of election expenses, and thus verified a false return.

First of all, we cannot condemn the petitioner by looking into the return of election expenses of Dr. Keskar because Dr. Keskar himself did not come into the witness box to verify what is written in his return of election expenses, and the petitioner had no chance to cross-examine him. We, therefore, cannot hold that the petitioner's return of a living person who has not come into the witness box.

As regards the difference between the return of election expenses and the cash book of the petitioner we find that there is nothing on the record to show that the return is false. It is possible that a few items mentioned in the return were not noted down in the cash book. It is also true that the election agent of a party is bound to keep correct accounts. But if there is any omission in the account book, it cannot condemn the party altogether so long as the return is correct. In this case there is no evidence to show that the return (Ex. N) verified by the petitioner is false in any material particular. Considering all this, we come to the conclusion that, no corrupt practice under section 124(4) has been committed by the petitioner.

We, therefore, decided all the issues in connection with the recrimination charges made by the respondent. The recrimination thus does not affect the case of the petitioner at all.

*Issue No. 8.*—Under issue No. 3 we have held that the respondent No. 1 is guilty under section 123(7) R.P. Act, 1951, on two counts. These are major corrupt practices. Section 100(2) R.P. Act, 1951, lays down:—"Subject to the provisions of sub-section (3) if the Tribunal is of opinion.....(b) that any corrupt practice specified in section 123 has been committed by a returned candidate or his agent or by any other person with connivance of a returned candidate or to be void." Under issue No. 7 we have held that the respondent must be held responsible for the corrupt practices. He is not entitled to the benefit of sub-section (3) of section 100 R.P. Act, 1951. The present case is

covered by clause (b) of sub-section (2) of section 100, R.P. Act, 1951. This Tribunal must, therefore, declare the election of the returned candidate (respondent No. 1) to be void.

The petitioner has also prayed that, he be declared to have been duly elected. Section 101 R.P. Act, 1951 enumerates the grounds, for which a candidate other than the returned candidate may be declared to have been elected. Under clause (a) of section 101 the petitioner has to show that in fact the petitioner or some other candidate received a majority of the valid votes. In the present case the petitioner secured 7,832 votes only as against 21,521 votes polled by the respondent No. 1. It cannot therefore, be said that, in fact the petitioner or some candidate other than the respondent No. 1 received a majority of the valid votes polled. Under clause (b) of section 101 it has to be proved that, but for the votes obtained by the returned candidate by corrupt or illegal practices, the petitioner or such other candidate would have obtained a majority of valid votes. In the present case it has not been shown that the margin of over 13,000 votes in favour of respondent No. 1 was due to the corrupt or illegal practices committed by him. The present case does not fall either under clause (a) or under clause (b) of section 101. It is not therefore, possible to grant a declaration that the petitioner has been duly elected. There were in the field other candidates besides the petitioner and respondent No. 1. It is therefore, impossible to contend that a candidate other than respondent No. 1 obtained a majority of the valid votes. There must be re-election in this constituency.

We are recording a finding that the respondent has been guilty of certain corrupt practices. The proviso to section 99, R.P. Act, 1951, lays down that "no person shall be named in the order under sub-clause (ii) of clause (a) unless he has been given notice to appear before the Tribunal and to show cause why he should not be so named." This proviso is based on the principle that no person should be condemned without giving him a hearing. In the present case charges of corrupt practices were made in the election petition against Kunwar Rananjaya Singh, respondent No. 1. It is true that he did not appear before us personally. However, he filed a written statement, and contested the election petition. The respondent was fully aware of the charges made against him. He had full opportunity to show before this Tribunal that, the charges were not well founded. In these circumstances, it seems unnecessary to issue a fresh notice to Kunwar Rananjaya Singh under the proviso to section 99 R.P. Act, 1951.

We have found above that no charge mentioned in the recrimination has been proved against the petitioner.

The petition has substantially succeeded. The petitioner is, therefore, entitled to get his costs, which we assess at Rs. 600.

#### ORDER

The election petition is partly allowed. Under section 100(2)(b) R.P. Act, 1951, we declare the election of Kunwar Rananjaya Singh, respondent No. 1 to the U.P. Legislative Assembly from Amethi (Central) Constituency, in 1952, to be void.

Under section 99 R.P. Act, 1951, we record that the following corrupt practices have been proved against Kunwar Rananjaya Singh, respondent No. 1:

- (a) the major corrupt practice under section 123(7) R.P. Act, 1951, read with Rule 117 and Schedule V of R.P. Rules, 1951;
- (b) the major corrupt practice under section 123(7) R.P. Act, 1951, read with Rule 118 and Schedule VI of R.P. Rules, 1951; and
- (c) the minor corrupt practice under section 123(4) R.P. Act, 1951.

No corrupt or illegal practice has been proved against Sri Baijnath Singh, petitioner.

Kunwar Rananjaya Singh, respondent No. 1, shall pay the petitioner Rs. 600 as costs. The petitioner is entitled to obtain a refund of his security deposit (Rs. 1,000).

The 11th February 1954.

(Sd.) V. G. OAK, I.C.S., *Chairman*.

(Sd.) N. N. MUKERJI, *Member*.

(Sd.) BABU RAM AVASTHI, *Member*.

Sarvasri R. N. Basu, Balram Lal Srivastava and M. P. Shukla represented the Petitioner while respondent No. 1 was represented by Sarvasri G. N. Kunjru and S. P. Sinha.

Sri V. G. Oak, I.C.S.,—*Chairman*.

Election Tribunal, Allahabad.

APPENDIX "A"  
IN THE ELECTION TRIBUNAL AT ALLAHABAD

PRESENT:

Sri V. G. Oak, I.C.S.,—*Chairman.*

Sri N. N. Mukerji—*Member.*

Sri Babu Ram Avasthi—*Member.*

ELECTION PETITION No. 252 OF 1952

Amethi (Central) Constituency, District Sultanpur, (U.P. Legislative Assembly)  
Sri Baijnath Singh—*Petitioner.*

*Versus*

Kr. Rananjaya Singh & four others—*Respondents.*

ORDER

This is a petitioner's application made on the 31st day of October 1952, for amendment of the Election Petition, dated, the 9th of May 1952 filed by him seeking the following reliefs:

"1. The election of the respondent No. 1 be declared to be void; and,

2. The petitioner be declared to have been duly elected."

He has now made an application for amending his petition by deleting the second relief.

Sri Gopinath Kunzru, the learned counsel for the respondent No. 1 has contested the application for amendment not only on the ground that as an application for amendment, it is not maintainable, but also on the ground that it is not maintainable even if it is looked upon as an application for withdrawal.

In some of the Election Petitions which have come up for trial before this Tribunal, the question has arisen whether the Election Petition can be amended at all and such amendments have been opposed on the grounds, *inter alia*:

- (i) The Election petition is filed under Section 81 of the Representation of the People Act, 1951, before the Election Commissioner, who sends it for trial to the Election Tribunal under Section 86 of the said Act. Hence, the Tribunal has to try it as it is received and has no jurisdiction to amend it and to try a new petition, as it were and the trial of the petition cannot include its amendment.
- (ii) The election petition is not an ordinary suit, but is a special remedy given by a new Act to be tried by a Special Court created and established by the same Act. Hence, the Code of Civil Procedure does not apply by its own force but applies only so far as it has been made applicable by Section 90(2) of the said Act; and,
- (iii) The Act itself in Section 83(3) allows amendment to a limited extent and, therefore, on the well known rule of interpretation of statutes that the "particular avoids the general", the general law of amendment under Order VI Rule 17 of the Code of Civil Procedure, must be taken to have been excluded by Section 83(3) of the said Act.

We have considered this point in detail in the election petition case No. 243 of 1952, and have found that during the last 24 years, most of the Election Tribunals in the whole of India, before which the question was agitated, have held without any exception that no amendment except as provided in Section 83(3) of the said Act, is permissible and so on the ground of *Stare-decisis*, we must follow that view.

We have also examined the whole law and have found that the opposite view is not the correct one. We have given our reasons in detail in the said Election Petition case of Sri Sheo Das *versus* Sri Abdul Samad (No. 243 of 1952) in which we have pronounced our judgment on this point on the 21st of November 1952.

It has, however, been argued by Sri M. A. Kazmi, the learned counsel for the petitioner that the said application may be treated as one for withdrawal of one of the two reliefs claimed in the original petition. The Representation of the Peoples Act has a special Chapter, namely Chapter IV, regarding "withdrawal, and abatement of Election Petitions," consisting of Sections 108 to 116. The ambit of withdrawal is laid down in Sections 108 to 111. They contemplate a

complete withdrawal of the petition, i.e. withdrawal from the whole case and all the reliefs. They do not contemplate withdrawal of a part of the relief as in Order XXIII, Rule 3, C.P.C., which comprises the complete withdrawal from the suit and also abandonment of a part of the claim.

We have considered over this matter and come to the conclusion that the rule of interpretation succinctly put by the Privy Council as "the particular avoids the general" must apply here also, and therefore, the provisions of Chapter IV of the Representation of the Peoples Act, 1951, alone can apply and not the general provisions of Order XXIII Rule 3, C.P.C., which comprises the complete withdrawal from the suit and also abandonment of a part of the claim.

We have considered over this matter and comes to the conclusion that the rule of interpretation succinctly put by the Privy Council as "the particular avoids the general" must apply here also, and therefore the provisions of Chapter IV of the Representation of the People's Act, 1951, alone can apply and not the general provisions of Order XXIII of the Code of Civil Procedure. This rule that where there is a general provision in an enactment or in one Section of some Act and there is a particular provision in another enactment or another Section of the same Act governing a particular class, then the latter prevails over the former and should be applied to the particular class, was applied by their lordships of the Judicial Committee of the Privy Council in '*Jagannath Prosad Singh Chawadhury versus Surajmal Jalal*' and others, 54 Indian Appeals page 1—25 A.L.J., page 23—A.I.R. 1927 P.C. page 1 (at the beginning of the 2nd paragraph of the judgment). There the question was regarding the rate of interest and also whether it should be simple or compound. The Privy Council noted that there were two provisions in the Code of Civil Procedure of 1908 regarding interest, i.e. Section 34 and Order XXXIV of which the former does not, but the latter does allow compound interest. As it was a suit for sale on a mortgage, the Privy Council applied the provisions of Order XXXIV, Rule 4, C.P.C.

We accordingly hold that the petitioner's application for amendment, dated the 31st of October 1952 cannot succeed in any case, either as an application for amendment of the original petition, or as one for its withdrawal.

#### ORDER

The petitioner's application, dated the 31st of October 1952, is, therefore, dismissed.

We now proceed to frame issues arising from the recrimination filed by the respondent No. 1.

Allahabad, the 2nd December 1952.

(Sd.) V. G. OAK, *Chairman*

(Sd.) N. N. MUKERJI, *Member*.

(Sd.) BABU RAM AVASTHI, *Member*.

#### APPENDIX "B"

#### IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 73 OF 1954

Rananjaya Singh—*Appellant*.

*Versus*

Bajjnath Singh & others—*Respondents*.

On appeal by Special Leave granted by this Court on the 4th March 1954 against the Judgment and Order, dated the 11th day of February 1954 of the Election Tribunal, Allahabad in Election Petition No. 252 of 1952.

*The 29th day of September 1954*

PRESENT:

The Hon'ble Mr. Chief Justice Mehr Chand Mahajan.

The Hon'ble Mr. Justice Bijan Kumar Mukherjea.

The Hon'ble Mr. Justice Sudhi Ranjan Das.

The Hon'ble Mr. Justice Vivian Bose.

The Hon'ble Mr. Justice Ghulam Hasan.

*For the Appellant*.—Messrs. N. C. Chatterjee and G. N. Kunzru, Senior Advocates (Messrs. Rameshwar Nath and Rajinder Narain, Advocates, with them).

*For Respondent No. 1*.—Mr. Veda Vyasa, Senior Advocate (Mr. G. C. Mathur, Advocate, with him).

## JUDGMENT

The Judgment of the Court was delivered by

Das, J.—Kunwar Rananjaya Singh, the appellant before us, is the son of Raja Bhagwan Bux Singh of Amethi. He was the successful candidate at an election to the Uttar Pradesh Legislative Assembly from Amethi (Central) constituency the polling in respect of which took place on the 31st January, 1952 and the result whereof was announced on the 6th February, 1952 and finally published in the Uttar Pradesh State Gazette on the 26th February, 1952. The respondent Baijnath Singh who was one of the unsuccessful candidates filed an election petition calling in question the election of the appellant. Three other unsuccessful candidates were also impleaded as respondents. The grounds on which the election was challenged were that the appellant himself, together with his own and his father's servants and other dependents and agents, committed various corrupt practices of bribery, exercise of undue influence, publication of false and defamatory statements and concealment of election expenses as per particulars set forth in the petition and the schedules thereto. He prayed that the election of the appellant be set aside and that he, the said respondent, be declared to have been duly elected. The appellant alone contested the petition. In his written statement he denied each and every one of the charges of corrupt practices levelled against him and he also filed a petition of recrimination challenging the conduct of the said respondent at the election. The said respondent denied the charges imputed to him. Altogether 15 issues were raised, namely, eight on the election petition and 7 on the petition of recrimination. All the 7 issues arising out of the petition of recrimination were found by the tribunal constituted for hearing of the election petition against the appellant and the petition of recrimination was dismissed. The appellant has not contested the correctness of those findings before us and nothing further need be said about them. As regards the issues arising on the main election petition the election tribunal found in favour of the appellant on issues Nos. 1, 2, 4, 5, 6 and 7 but decided issue No. 3 against the appellant. That issue was as follows:—

"3. Did respondent No. 1 employ for election more persons than authorised by law?

Did respondent No. 1 incur the expenditure shown in the list as "Heads of other concealed expenditures"? Did he exceed the prescribed limit of expenditure for election?"

The above issue related to charges made out in paragraph 6 of the election petition and the list of particulars set out in Part III of the schedule thereto. The particulars in that part were grouped under two main heads, each containing several items. The first head referred to persons alleged to have been employed on payment far in excess of the prescribed number and not shown in the return of election expenses. The second head of particulars contained other alleged concealed expenditures. The election tribunal held in favour of the appellant on all items of charges under both heads in Part III except items (ii) and (iii) of the first head. Item (ii) charges that all the paid Ziladars of Amethi estate who were about 20 in number assisted by their peons and orderlies worked for the appellant and item No. (iii) complained that the Manager and the Assistant Manager of that estate also worked for him. The tribunal held that the number of all these persons coming within these two categories far exceeded the prescribed number of persons who could be employed in an election and their salary for the period they worked for the appellant in connection with the election, if added to the admitted election expenses, would exceed the maximum expenditure permissible for contesting a single-member constituency. The tribunal, therefore, held that the appellant was guilty, under both these heads, of corrupt practice as defined in section 123(7) of the Representation of the People Act, 1951 and was consequently liable to be dealt with under section 100(2)(b) and section 145 of that Act. These findings as to employment of extra persons on payment and the expenditure of money in excess of the permissible maximum election expenses necessarily led to the further finding that inasmuch as these expenses had not been shown in the appellant's return of election expenses the appellant was also guilty of a minor corrupt practice as defined in section 124(4) of the Act and was liable to be dealt with under section 100(2)(a) and section 145 of the Act. In the result, the tribunal under the general issue No. 8 only declared the election of the appellant to be void. Hence this appeal filed by the unseated candidate with the special leave of this Court.

Section 77 of the Representation of the People Act, 1951 provides that the maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with election

shall be as may be prescribed. As regards the maximum expense Rule 117 lays down that no expense shall be incurred or authorised by a candidate or his election agent on account of or in respect of the conduct and management of an election in any one constituency in a State in excess of the maximum amount specified in respect of that constituency in Schedule V. The maximum amount specified in that schedule in respect of a single-member constituency in the Uttar Pradesh is only Rs. 8,000. Rule 118 prescribes that no person other than or in addition to those specified in Schedule VI shall be employed for payment by a candidate or his election agent in connection with an election. Schedule VI allows 1 election agent, 1 counting agent, 1 clerk and 1 messenger at all elections. It also allows, in addition to these, 1 clerk and 1 messenger for every 75,000 electors and 1 Polling Agent and 2 relief agents for each polling booth and 1 messenger at each polling booth. The contravention of the provisions of section 77 read with Rules 117 and 118 and Schedules V and VI is made a corrupt practice by section 123(7). Section 123(7) clearly shows that in order to amount to a corrupt practice the excess expenditure must be incurred or authorised by a candidate or his agent and the employment of extra persons must likewise be by a candidate or his agent.

The charge against the appellant was, *inter alia*, that the Manager, Assistant Manager, 20 Ziladars of Amethi estate and their peons and orderlies had worked for the appellant in connection with the election. The tribunal took the view—we think quite erroneously—that although the estate belonged to the father of the appellant, nevertheless, as the appellant was the heir apparent and actually looked after the estate on behalf of the old and infirm proprietor, these servants of the estate were “virtually” his “own” servants and could properly be regarded as having been employed for payment by the appellant. The learned Advocate appearing for the respondent frankly and properly conceded that he could not support this part of the finding of the tribunal. He, however, contended, relying on the language used in section 77, that if the number of persons who worked for payment in connection with the election exceeded the maximum number specified in Schedule VI, the case fell within the mischief of the relevant sections and the rules, no matter who employed them or who made payments to them. It is true that section 77 uses the words “who may be employed for payment” without indicating by whom employed or paid but it must be borne in mind that the gist of a corrupt practice as defined in section 123(7) is that the employment of extra persons and the incurring or authorising of excess expenditure must be by the candidate or his agent. The provisions of Rules 117 and 118 are to be read in the light of this definition of a corrupt practice. Indeed, these rules follow the language of section 123(7) in that they prohibit the employment of persons other than or in addition to those specified in Schedule VI and the incurring or authorising of expenditure in excess of the amount specified in Schedule V and in both cases by a candidate or his agent. Section 77 must, therefore, be read in a manner consonant with section 123(7) and Rules 117 and 118. In this view of the matter the observation made by Phillimore, J. in *Joseph Forster Wilson and another v. Sir Christopher Furness* (1) relied on by the appellant and referred to in the judgment of the tribunal are quite apposite. There can be no doubt that in the eye of the law these extra persons were in the employment of the father of the appellant and paid by the father and they were neither employed nor paid by the appellant. The case, therefore, does not fall within section 123(7) at all and if that be so, it cannot come within section 124(4). It obviously was a case where a father assisted the son in the matter of the election. These persons were the employees of the father and paid by him for working in the estate. At the request of the father they assisted the son in connection with the election which strictly speaking they were not obliged to do. Was the position in law at all different from the position that the father had given these employees a holiday on full pay and they voluntarily rendered assistance to the appellant in connection with his election? We think not. It is clear to us that qua the appellant these persons were neither employed nor paid by him. So far as the appellant was concerned they were mere volunteers and the learned Advocate for the respondent admits that employment of volunteers does not bring the candidate within the mischief of the definition of corrupt practice as given in section 123(7). The learned Advocate, however, contended that such a construction would be against the spirit of the election laws in that candidates who have rich friends or relations would have an unfair advantage over a poor rival. The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing



the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court.

On a consideration of the relevant provisions of the Act and the rules and the arguments advanced before us we are of opinion that the appellant cannot in the circumstances of this case be held to be guilty of any corrupt practice under section 123(7) as alleged against him. It follows from this that not having incurred any expenditure over and above what was shown by him in his return of election expenses he cannot be said to have concealed such expenditure and, therefore, he cannot be held to have been guilty of any minor corrupt practice under section 124(4) of the Act. In the view we have taken, namely, that these extra men were not employed or paid by the appellant, it is unnecessary, for the purpose of this appeal, to discuss the question whether, if one's own servants are also utilised or employed in the conduct of the election, their salary for the period they are so utilised or employed should be regarded as election expenses and shown in the return. On that we prefer not to express any opinion on this occasion. No other point having been raised we allow this appeal with costs.

*The 29th September 1954.*

(Sd.) MEHR CHAND MAHAJAN, C. J

(Sd.) B. K. MUKHERJEA J

(Sd.) S. R. DAS, J.

(Sd.) VIVIAN BOSE, J.

(Sd.) GHULAM HASAN, J.

[No. 19/252/52-Elec.III/19409.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.

